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(Announcements)

COURT PROCEEDINGS

COURT OF JUSTICE

Judgment of the Court (Fourth Chamber) of 4 February 2016 (requests for a preliminary ruling from the First-tier Tribunal (Tax Chamber) — United Kingdom, Finanzgericht München — Germany) — C & J Clark International Ltd v The Commissioners for Her Majesty's Revenue & Customs (C-659/13), Puma SE v Hauptzollamt Nürnberg (C-34/14)

(Joined Cases C-659/13 and C-34/14) ([1])

(References for a preliminary ruling — Admissibility — Dumping — Imports of footwear with uppers of leather originating in China and Vietnam — Validity of Regulation (EC) No 1472/2006 and Implementing Regulation (EU) No 1294/2009 — WTO Anti-Dumping Agreement — Regulation (EC) No 384/96 — Article 2(7) — Determination of dumping — Imports from non market economy countries — Claims for market economy treatment — Time limit — Article 9(5) and (6) — Claims for individual treatment — Article 17 — Sampling — Article 3(1), (5) and (6), Article 4(1) and Article 5 (4) — Cooperation of the Union industry — Article 3(2) and (7) — Determination of injury — Other known factors — Community Customs Code — Article 236(1) and (2) — Repayment of duties not legally owed — Time limit — Unforeseeable circumstances or force majeure — Invalidity of a regulation which imposed anti-dumping duties)

(2016/C 106/02)

Languages of the case: English and German

Referring courts

First-tier Tribunal (Tax Chamber), Finanzgericht München

Parties to the main proceedings

Appellant/applicant: C & J Clark International Ltd (C-659/13), Puma SE (C-34/14)

Respondent/defendant: The Commissioners for Her Majesty's Revenue & Customs (C-659/13), Hauptzollamt Nürnberg (C-34/14)

Operative part of the judgment

1. *Council Regulation (EC) No 1472/2006 of 5 October 2006 imposing a definitive anti-dumping duty and collecting definitely the provisional duty imposed on imports of certain footwear with uppers of leather originating in the People's Republic of China and Vietnam is invalid in so far as it infringes Article 2(7)(b) and Article 9(5) of Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community, as amended by Council Regulation (EC) No 461/2004 of 8 March 2004.*

Examination of the questions referred for a preliminary ruling has disclosed no factor of such a kind as to affect the validity of Regulation No 1472/2006 in the light of Article 296 TFEU and Article 2(7)(c), Article 3(1), (2) and (5) to (7), Article 4(1), Article 5(4), Article 9(6) and Article 17 of Regulation No 384/96 as amended by Regulation No 461/2004, considered in isolation in the case of some of those articles or provisions and jointly in the case of others.

2. *Council Implementing Regulation (EU) No 1294/2009 of 22 December 2009 imposing a definitive anti-dumping duty on imports of certain footwear with uppers of leather originating in Vietnam and originating in the People's Republic of China, as extended to imports of certain footwear with uppers of leather consigned from the Macao SAR, whether declared as originating in the Macao SAR or not, following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 384/96, is invalid to the same extent as Regulation No 1472/2006.*

3. *In a situation such as that at issue in the main actions, the courts of the Member States may not rely on judgments in which the judicature of the European Union annulled a regulation that had imposed anti-dumping duties, in so far as it related to certain exporting producers covered by it, in order to hold that the duties imposed on the products of other exporting producers covered by that regulation, and in the same situation as the exporting producers in respect of which the regulation was annulled, are not legally owed within the meaning of Article 236(1) of Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code. As such a regulation has not been withdrawn by the institution of the European Union which adopted it, annulled by the judicature of the European Union or declared invalid by the Court of Justice of the European Union in so far as it imposes duties on the products of those other exporting producers, those duties remain legally owed within the meaning of that provision.*

4. *Article 236(2) of Regulation No 2913/92 must be interpreted as meaning that the fact that a regulation imposing anti-dumping duties is declared invalid in whole or in part by the judicature of the European Union does not constitute unforeseeable circumstances or force majeure within the meaning of that provision.*

([1]) OJ C 71, 8.3.2014.
OJ C 194, 24.6.2014.

Judgment of the Court (Fifth Chamber) of 28 January 2016 (request for a preliminary ruling from the Tribunale Amministrativo Regionale per il Piemonte — Italy) — Consorzio Artigiano Servizio Taxi e Autonoleggio (CASTA) and Others v Azienda Sanitaria Locale di Ciriè, Chivasso e Ivrea (ASL TO4), Regione Piemonte

(Case C-50/14) ([1])

(Reference for a preliminary ruling — Public contracts — Articles 49 TFEU and 56 TFEU — Directive 2004/18/CE — Medical transport services — National legislation authorising regional health authorities to entrust medical transport activities to registered voluntary associations fulfilling the legal requirements, directly and without advertising, by means of reimbursement of the expenditure incurred — Lawfulness)

(2016/C 106/03)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per il Piemonte

Parties to the main proceedings

Applicants: Consorzio Artigiano Servizio Taxi e Autonoleggio (CASTA), Galati Lucimorto Roberto — Autonoleggio Galati, Seren Bernardone Guido — Autonoleggio Seren Guido

Defendants: Azienda Sanitaria Locale di Ciriè, Chivasso e Ivrea (ASL TO4), Regione Piemonte

Intervening parties: Associazione Croce Bianca del Canavese and Others, Associazione Nazionale Pubblica Assistenza (ANPAS) — Comitato Regionale Liguria

Operative part of the judgment

1. *Articles 49 TFEU and 56 TFEU must be interpreted as meaning that they do not preclude national legislation, such as that at issue in the main proceedings, which allows local authorities to entrust the provision of medical transport services by direct award, without any form of advertising, to voluntary associations, provided that the legal and contractual framework in which the activity of those associations is carried out actually contributes to the social purpose and the pursuit of the objectives of the good of the community and budgetary efficiency;*

2. *Where a Member State allows public authorities to make direct use of voluntary associations to carry out certain tasks, a public authority which intends to conclude contracts with such associations is not required, under EU law, to compare the proposals of various associations beforehand;*

3. *Where a Member State, which allows public authorities to make direct use of voluntary associations to carry out certain tasks, authorises those associations to engage in certain commercial activities, that Member State must establish the limits within which those activities may be carried out. Those limits must nevertheless ensure that those commercial activities are marginal, having regard to all the activities of such associations, and must support the pursuit of their voluntary activity.*

([1]) OJ C 93, 29.3.2014.

Judgment of the Court (Fourth Chamber) of 28 January 2016 (request for a preliminary ruling from the Finanzgericht Düsseldorf, Finanzgericht Hamburg — Germany) — CM Eurologistik GmbH v Hauptzollamt Duisburg (C-283/14), Grünwald Logistik Service GmbH (GLS) v Hauptzollamt Hamburg-Stadt (C-284/14)

(Joined Cases C-283/14 and C-284/14) ([1])

(References for a preliminary ruling — Regulation (EU) No 158/2013 — Validity — Anti-dumping duty imposed on imports of certain prepared or preserved citrus fruits originating in China — Effect to be given to a judgment having found a preceding regulation to be invalid — Reopening of the initial investigation to determine the normal value — Reimposition of the anti-dumping duty on the basis of the same data — Investigation period to be taken into account)

(2016/C 106/04)

Language of the case: German

Referring court

Finanzgericht Düsseldorf, Finanzgericht Hamburg

Parties to the main proceedings

Applicants: CM Eurologistik GmbH (C-283/14), Grünwald Logistik Service GmbH (GLS) (C-284/14)

Defendants: Hauptzollamt Duisburg (C-283/14), Hauptzollamt Hamburg-Stadt (C-284/14)

Operative part of the judgment

The consideration of the questions referred has not revealed any factor capable of affecting the validity of the Council Implementing Regulation (EU) No 158/2013 of 18 February 2013 reimposing a definitive anti-dumping duty on imports of certain prepared or preserved citrus fruits (namely mandarins, etc.) originating in the People's Republic of China.

([1]) OJ C 315, 15.9.2014.

Judgment of the Court (First Chamber) of 4 February 2016 (request for a preliminary ruling from the Amtsgericht Sonthofen — Germany) — Criminal proceedings against Sebat Ince

(Case C-336/14) ([1])

(Freedom to provide services — Article 56 TFEU — Games of chance — Public monopoly on betting on sporting competitions — Prior administrative authorisation — Exclusion of private operators — Collection of bets on behalf of an operator established in another Member State — Criminal penalties — National provision contrary to EU law — Exclusion — Transition to a system providing for the grant of a limited number of licences to private operators — Principles of transparency and impartiality — Directive 98/34/EC — Article 8 — Technical regulations — Rules on services — Obligation to notify)

(2016/C 106/05)

Language of the case: German

Referring court

Amtsgericht Sonthofen

Party in the main proceedings

Sebat Ince

Operative part of the judgment

1. *Article 56 TFEU must be interpreted as precluding the criminal prosecution authorities of a Member State from penalising the unauthorised intermediation of sporting bets by a private operator on behalf of another private operator lacking an authorisation to organise sporting bets in that Member State, but holding a licence in another Member State, in the case where the obligation to hold an authorisation to organise or intermediate sporting bets forms part of a public monopoly regime deemed by the national courts to be contrary to EU law. Article 56 TFEU precludes such a penalty, even where a private operator may, in theory, obtain an authorisation to organise or intermediate sporting bets, to the extent that knowledge of the procedure for granting such an authorisation is not guaranteed and the public monopoly regime with regard to sporting bets, deemed by the national courts to be contrary to EU law, has persisted despite the adoption of such a procedure.*

2. *Article 8(1) of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services, as amended by Directive 98/48/EC of the European Parliament and of the Council of 20 July 1998, must be interpreted as meaning that the draft version of regional legislation which maintains in force, throughout the region concerned, the provisions of legislation common to the various regions of a Member State that has expired is subject to the notification obligation laid down in that Article 8(1), in so far as that draft version contains technical regulations within the meaning of Article 1 of the directive, with the result that failure to comply with that obligation renders those regulations unenforceable against an individual in the context of criminal proceedings. Such an obligation is not called into question by the fact that that common legislation had previously been notified to the Commission at the draft stage pursuant to Article 8(1) of Directive 98/34 and expressly provided for the possibility of an extension, which possibility, however, was not exercised.*

3. *Article 56 TFEU must be interpreted as precluding a Member State from penalising the unauthorised intermediation of sporting bets on its territory on behalf of an economic operator holding a licence to organise sporting bets in another Member State:*

   — *where the issue of an authorisation to organise sporting bets is subject to the obtaining of a licence by that operator in accordance with a procedure for the award of licences, such as that at issue in the main proceedings, if the referring court finds that that procedure does not observe the principles of equal treatment and non-discrimination on grounds of nationality and the consequent obligation of transparency, and*

   — *to the extent that, despite the entry into force of a national provision permitting the grant of licences to private operators, application of the provisions establishing a public monopoly regime with regard to the organisation and intermediation of sporting bets, deemed by the national courts to be contrary to EU law, has persisted in practice.*

([1]) OJ C 339, 29.9.2014.

Judgment of the Court (Third Chamber) of 28 January 2016 (request for a preliminary ruling from the Tribunale di Frosinone — Italy) — Criminal proceedings against Rosanna Laezza

(Case C-375/14) ([1])

(Reference for a preliminary ruling — Articles 49 TFEU and 56 TFEU — Freedom of establishment — Freedom to provide services — Betting and gaming — Judgment of the Court of Justice which declared the national rules on licences for the collection of bets incompatible with EU law — Reorganisation of the system by way of a new call for tenders — Free-of-charge transfer of the rights to use tangible and intangible assets owned by licensees and which constitute their network for the management and collection of bets. — Restriction — Overriding reasons in the public interest — Proportionality)

(2016/C 106/06)

Language of the case: Italian

Referring court

Tribunale di Frosinone

Party in the main proceedings

Rosanna Laezza

Operative part of the judgment

Articles 49 TFEU and 56 TFEU must be interpreted as precluding a restrictive national provision, such as that at issue in the main proceedings, which requires a licensee to transfer, free of charge, on the cessation of business as a result of the expiry of the final term of the licence, the rights to use tangible and intangible assets which he owns and which constitute his network for the management and collection of bets, in so far as that restriction goes beyond what is necessary to attain the objective actually pursued by that provision, which is for the referring court to verify.

([1]) OJ C 372, 20.10.2014.

Judgment of the Court (Second Chamber) of 28 January 2016 — European Commission v Portuguese Republic

(Case C-398/14) ([1])

(Failure of a Member State to fulfil obligations — Directive 91/271/EEC — Urban waste water treatment — Article 4 — Secondary treatment or equivalent — Annex I, Sections B and D)

(2016/C 106/07)

Language of the case: Portuguese

Parties

Applicant: European Commission (represented by: P. Guerra e Andrade and E. Manhaeve, acting as Agents)

Defendant: Portuguese Republic (represented by: L. Inez Fernandes, J. Reis Silva and J. Brito e Silva, acting as Agents)

Operative part of the judgment

The Court:

1. *Declares that, by not ensuring that discharges from urban waste water treatment plants were subject to an adequate level of treatment, meeting the relevant requirements of Annex I.B to Council Directive 91/271/EEC of 21 May 1991 concerning urban waste water treatment, as amended by Regulation (EC) No 1137/2008 of the European Parliament and of the Council of 22 October 2008, in the agglomerations of Alvalade, Odemira, Pereira do Campo, Vila Verde (PTAGL 420), Mação, Pontével, Castro Daire, Arraiolos, Ferreira do Alentejo, Vidigueira, Alcácer do Sal, Amareleja, Monchique, Montemor-o-Novo, Grândola, Estremoz, Maceira, Portel, Viana do Alentejo, Cinfães, Ponte de Reguengo, Canas de Senhorim, Repeses, Vila Viçosa, Santa Comba Dão, Tolosa, Loriga, Cercal, Vale de Santarém, Castro Verde, Almodôvar, Amares/Ferreiras, Mogadouro, Melides, Vila Verde (PTAGL 421), Serpa, Vendas Novas, Vila de Prado, Nelas, Vila Nova de São Bento, Santiago do Cacém, Alter do Chão, Tábua and Mangualde, the Portuguese Republic has failed to fulfil its obligations under Article 4 of that directive;*

2. *Orders the Portuguese Republic to pay the costs.*

(1) OJ C 380, 27.10.2014.

Judgment of the Court (Fifth Chamber) of 28 January 2016 — Quimitéchnica.com — Comércio e Indústria Química, SA, José de Mello — Sociedade Gestora de Participações Sociais, SA v European Commission

(Case C-415/14 P) (1)

(Appeal — Cartels — European market in phosphates for animal feed — Fine imposed on the appellants following a settlement procedure — Payment of the fine in instalments — Requirement to provide a bank guarantee at a bank with a long-term 'AA' credit rating — Duty to state reasons)

(2016/C 106/08)

Language of the case: Portuguese

Parties

Appellants: Quimitéchnica.com — Comércio e Indústria Química, SA, José de Mello — Sociedade Gestora de Participações Sociais, SA (represented by: J. Calheiros, lawyer)

Other party to the proceedings: European Commission (represented by: V. Bottka and B. Mongin, acting as Agents, and M. Marques Mendes, lawyer)

Operative part of the judgment

The Court:

1. *Sets aside the judgment of the General Court of the European Union of 26 June 2015 in Quimitéchnica.com and José de Mello v Commission;*

2. *Refers the matter back before the General Court of the European Union;*

3. *Reserves the costs.*

(1) OJ C 388, 3.11.2014.

Judgment of the Court (Ninth Chamber) of 28 January 2016 — Éditions Odile Jacob SAS v European Commission, Lagardère SCA, Wendel

(Case C-514/14 P) (1)

(Appeal — Merger of undertakings in the book publishing market — Decision adopted following the annulment of a decision approving the purchaser of certain assets for lack of independence of an agent — Article 266 TFEU — Enforcement of the judgment ordering annulment — Subject matter of proceedings — Legal basis for the decision at issue — Retroactive effect of that decision — Independence of the purchaser of the assets sold vis-à-vis the seller)

(2016/C 106/09)

Language of the case: French

Parties

Appellant: Éditions Odile Jacob SAS (represented by: J.-F. Bellis, O. Fréget and L. Eskenazi, avocats)

Other parties to the proceedings: European Commission (represented by: C. Giolito and B. Mongin, acting as Agents), Lagardère SCA (represented by: A. Winckler, F. de Bure, J.-B. Pinçon and L. Bary, avocats), Wendel (represented by: M. Trabucchi, F. Gordon, A. Gosset-Grainville, avocats, and C. Renner, Rechtsanwältin)

Operative part of the judgment

The Court:

1. *Dismisses the appeal.*

2. *Orders Éditions Odile Jacob SAS to pay the costs incurred by the European Commission, Lagardère SCA and Wendel.*

([1]) OJ C 26, 26.1.2015.

Judgment of the Court (Eighth Chamber Chamber) of 28 January 2016 — Heli-Flight GmbH & Co. KG v European Aviation Safety Agency (EASA)

(Case C-61/15 P) ([1])

(Appeal — Civil aviation — Application for approval of flight conditions presented — Decision of the European Aviation Safety Agency — Rejection of an application — Compulsory preliminary administrative procedure — Possibility of an action before the court of the Union European — Role of the court — Adoption of measures of organisation of procedure — Obligation — Complex technical assessments)

(2016/C 106/10)

Language of the case: German

Parties

Appellant: Heli-Flight GmbH & Co. KG (represented by: T. Kittner, lawyer)

Other party to the proceedings: European Aviation Safety Agency (EASA) (represented by: T. Masing, lawyer)

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Heli-Flight GmbH & Co. KG to bear its own costs.*

([1]) OJ C 155, 11.5.2015.

Judgment of the Court (Sixth Chamber) of 28 January 2016 (request for a preliminary ruling from the Bundesfinanzhof — Germany) — BP Europa SE v Hauptzollamt Hamburg-Stadt

(Case C-64/15) ([1])

(Reference for a preliminary ruling — Taxation — General arrangements for excise duty — Directive 2008/118/EC — Occurrence of an irregularity during a movement of excise goods — Movement of goods under a duty suspension arrangement — Goods missing on delivery — Levying of excise duty in the absence of proof of destruction or loss of the goods)

(2016/C 106/11)

Language of the case: German

Referring court

Bundesfinanzhof

Parties to the main proceedings

Applicant: BP Europa SE

Defendant: Hauptzollamt Hamburg-Stadt

Operative part of the judgment

1. *Article 20(2) of Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC must be interpreted as meaning that the movement of excise goods under a duty suspension arrangement ends, for the purpose of that provision, in a situation such as that in the main proceedings, when the consignee of those goods has found, on unloading in full from the means of transport carrying the goods in question, that there were shortages of the goods in comparison with the amount which should have been delivered to him.*

2. *The combined provisions of Articles 7(2)(a) and 10(2) of Directive 2008/118 must be interpreted as meaning that:*

   — *the situations which they govern are outside that referred to in Article 7(4) of that directive and*

   — *the fact that a provision of national law transposing Article 10(2) of Directive 2008/118, such as that at issue in the main proceedings, does not expressly state that the irregularity governed by that provision of the directive must have given rise to the release for consumption of the goods concerned, such an omission cannot prevent the application of that national provision to the discovery of shortages, which of necessity entail such a release for consumption.*

3. *Article 10(4) of Directive 2008/118 must be interpreted as meaning that it applies not only where the total amount of goods moving under a duty suspension arrangement failed to arrive at its destination, but also where only a part of those goods failed to arrive at its destination.*

([1]) OJ C 138, 27.4.2015.

Judgment of the Court (Seventh Chamber) of 4 February 2016 (request for a preliminary ruling from the Oberlandesgericht Düsseldorf — Germany) — Youssef Hassan v Breiding Vertriebsgesellschaft mbH

(Case C-163/15) ([1])

(Reference for a preliminary ruling — Community trade mark — Regulation (EC) No 207/2009 — Article 23 — Licence — Register of Community trade marks — Right of the licensee to bring proceedings for infringement notwithstanding the fact that the licence has not been entered in the Register)

(2016/C 106/12)

Language of the case: German

Referring court

Oberlandesgericht Düsseldorf

Parties to the main proceedings

Applicant: Youssef Hassan

Defendant: Breiding Vertriebsgesellschaft mbH

Operative part of the judgment

The first sentence of Article 23(1) of Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark must be interpreted as meaning that the licensee may bring proceedings alleging infringement of a Community trade mark which is the subject of the licence, although that licence has not been entered in the Register of Community trade marks.

([1]) OJ C 254, 3.8.2015.

Request for a preliminary ruling from the Rechtbank Noord-Holland (Netherlands) lodged on 14 December 2015 — X, GoPro Coöperatief UA v Inspecteur van de Belastingdienst Douane, kantoor Rotterdam Rijnmond

(Case C-666/15)

(2016/C 106/13)

Language of the case: Dutch

Referring court

Rechtbank Noord-Holland

Parties to the main proceedings

Applicants: X, GoPro Coöperatief UA

Defendant: Inspecteur van de Belastingdienst Douane, kantoor Rotterdam Rijnmond

Questions referred

1. Are the Commission's explanatory notes to subheading 8525 80 30 and to subheadings 8525 80 91 and 8525 80 99 of the Combined Nomenclature to be interpreted as meaning that there are also 'at least 30 minutes in a single sequence of video' in the case where, by means of a 'video record' mode, sequences of video together lasting longer than 30 minutes are recorded, but those sequences of video are recorded in separate files, each with a duration of less than 30 minutes, and the user must, when playing back, open each file with a duration of less than 30 minutes separately, although it is possible, with the aid of the software supplied by GoPro, to place the sequences, which have been incorporated into those files, on a personal computer one after another and thereby save a single video sequence of more than 30 minutes' duration in a single file on a personal computer?

2. Is classification, under CN subheading 8525 80 99, of video camera recorders which can record sequences from external sources precluded in the case where the sequences cannot be played back via an external TV receiver or an external monitor because those video camera recorders, such as the GoPro Hero 3 Silver Edition, can play back, on an external screen or monitor, only files which they have recorded via their own lenses?

Request for a preliminary ruling from the Hof van beroep te Antwerpen (Belgium) lodged on 14 December 2015 — Loterie Nationale — Nationale Loterij NV v Paul Adriaensen and Others

(Case C-667/15)

(2016/C 106/14)

Language of the case: Dutch

Referring court

Hof van beroep te Antwerpen

Parties to the main proceedings

Appellant: Loterie Nationale — Nationale Loterij NV

Respondents: Paul Adriaensen, Werner De Kesel, The Right Frequency VZW

Question referred

Does the application of paragraph 14 of Annex I to Directive 2005/29/EC ([1]) of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council require that a prohibited pyramid promotional scheme exists only if the realisation of the financial promise to existing members:

— depends primarily or mostly on the direct transfer of the contributions of the new members ('direct link'),

or

— does it suffice that the realisation of the financial promise to existing members depends primarily or mostly on an indirect payment through the contributions of existing members, i.e. existing members do not obtain their compensation primarily or mostly from their own sale or their own consumption of goods or services, but depend for the realisation of the financial promise primarily or mostly on the subscription and contributions of new members ('indirect link')?

([1]) OJ 2005 L 149, p. 22.

Appeal brought on 15 December 2015 by The Tea Board against the judgment of the General Court (Eighth Chamber) delivered on 2 October 2015 in Case T-624/13: The Tea Board v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-673/15 P)

(2016/C 106/15)

Language of the case: English

Parties

Appellant: The Tea Board (represented by: M.C. Maier, A. Nordemann, Rechtsanwälte)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), Delta Lingerie

Form of order sought

The appellant claims that the Court should:

— annul the contested judgment of the General Court of 2 October 2015 in Case T-624/13 as far as the General Court dismissed the action with respect to the following services covered by the mark applied for in Classes 35 and 38:

Business consultancy with regard to the creation and operation of retail outlets and central purchasing agencies for retailing and advertising purposes; Sales promotion (for others), advertising, business management, business administration, on-line advertising on a computer network, distribution of advertising material (leaflets, flyers, free newspapers, samples), arranging newspaper subscriptions for others; Business information or enquiries; organization of events and exhibitions for commercial or advertising purposes, advertising management, rental of advertising space, radio and television advertising, advertising sponsorship. (Class 35)

Telecommunications, computer-aided transmission of messages and images, interactive television broadcasting services relating to the presentation of products, communications by computer terminals, communications (transmissions) on the open and closed world wide web. (Class 38)

— if necessary, remit the case back to the General Court,

— order the Defendant to bear the costs of the proceedings.

Pleas in law and main arguments

1. The Action seeks the partial annulment of the judgment of the General Court in Case T-624/13 of 2 October 2015 in so far as the General Court dismissed the action with respect to services covered by the contested mark in Classes 35 and 38.

2. The Action is based on two pleas in law: infringement of Article 8(1)(b) CTMR ([1]) and infringement of Article 8(5) CTMR.

3. The Applicant is of the opinion that the essential function of a Community collective mark according to Article 66(2) CTMR, consisting of an indication which serves to designate the geographical origin of the goods covered, is not to serve as an indication of commercial origin but only to guarantee the collective origin of the goods or services offered and sold under the mark, i.e. that the products come from an undertaking which is located in the geographical region adopted as a Community collective mark and which is entitled to use the Community collective mark.

4. Consequently, in the Applicant's view it must be concluded that, in the framework of Article 8(1)(b) CTMR, the geographical origin must be taken into account as a relevant factor- either when assessing the similarity of the goods and/or services at issue and/or when carrying out a global assessment of likelihood of confusion.

5. Therefore, when comparing goods and/or services of an earlier Community collective mark according to Article 66(2) CTMR, consisting of geographical indication, with those of a Community individual mark, it is not, in the Applicant's opinion, decisive whether the goods and services in question are similar in regard to their nature, purpose, end users and/or distribution channels. Rather, it must be questioned whether the goods and/or services in question may have the same geographical origin.

6. The Applicant's interpretation of Article 66(2) CTMR results from

   1) the inner logic of Regulation No. 207/2009, in particular the fact that

      i. Article 66(2) CTMR constitutes and exception within Regulation No. 207/2009 as, according to Article 7(1)(c) CTMR, trademarks which consist exclusively of signs or indications which may serve, in trade, to designate the geographical origin of the goods or of rendering of the service shall not be registered,

      ii. according to Article 67(2) CTMR, the regulations governing use of a Community collective trade mark consisting of geographical indication must authorise *any* person whose goods or services originate in the geographical area concerned to become a member of the association which is the proprietor of the mark, and consequently, a Community collective mark consisting of geographical indication is *never* capable of distinguishing goods or services of the members of the association which is the proprietor of the mark from those of other undertakings.

   2) an interpretation of that provision in the light of Regulation No. 1151/2012 ([2]) and in the light of the TRIPs-Agreement, according to which geographical indications should enjoy a high level of protection, and according to which presentations of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin, in a manner which misleads the public as to the *geographical origin* of the good, should be prohibited.

7. The Applicant is of the opinion that the qualities established by the General Court in connection with DARJEELING can also be transferred to services such as business consultancy or telecommunication services, and are able to strengthen the power of attraction of the contested mark in that regard. Further, the Applicant points out that the General Court did not provide any substantiated grounds in its judgment, as to why the qualities associated with the mark DARJEELING could not be transferred to services in Class 35 and 38, which, in itself is an error in law.

([1]) Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark OJ L 78, p. 1

([2]) Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs OJ L 343, p. 1

Appeal brought on 15 December 2015 by The Tea Board against the judgment of the General Court (Eighth Chamber) delivered on 2 October 2015 in Case T-625/13: The Tea Board v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-674/15 P)

(2016/C 106/16)

Language of the case: English

Parties

Appellant: The Tea Board (represented by: M.C. Maier, A. Nordemann, Rechtsanwälte)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), Delta Lingerie

Form of order sought

The appellant claims that the Court should:

— annul the contested judgment of the General Court of 2 October 2015 in Case T-625/13 as far as the General Court dismissed the action with respect to the following services covered by the mark applied for in Classes 35 and 38:

Business consultancy with regard to the creation and operation of retail outlets and central purchasing agencies for retailing and advertising purposes; Sales promotion (for others), advertising, business management, business administration, on-line advertising on a computer network, distribution of advertising material (leaflets, flyers, free newspapers, samples), arranging newspaper subscriptions for others; Business information or enquiries; organization of events and exhibitions for commercial or advertising purposes, advertising management, rental of advertising space, radio and television advertising, advertising sponsorship. (Class 35)

Telecommunications, computer-aided transmission of messages and images, interactive television broadcasting services relating to the presentation of products, communications by computer terminals, communications (transmissions) on the open and closed world wide web. (Class 38)

— if necessary, remit the case back to the General Court,

— order the Defendant to bear the costs of the proceedings.

Pleas in law and main arguments

1. The Action seeks the partial annulment of the judgment of the General Court in Case T-625/13 of 2 October 2015 in so far as the General Court dismissed the action with respect to services covered by the contested mark in Classes 35 and 38.

2. The Action is based on two pleas in law: infringement of Article 8(1)(b) CTMR ([1]) and infringement of Article 8(5) CTMR.

3. The Applicant is of the opinion that the essential function of a Community collective mark according to Article 66(2) CTMR, consisting of an indication which serves to designate the geographical origin of the goods covered, is not to serve as an indication of commercial origin but only to guarantee the collective origin of the goods or services offered and sold under the mark, i.e. that the products come from an undertaking which is located in the geographical region adopted as a Community collective mark and which is entitled to use the Community collective mark.

4. Consequently, in the Applicant's view it must be concluded that, in the framework of Article 8(1)(b) CTMR, the geographical origin must be taken into account as a relevant factor- either when assessing the similarity of the goods and/or services at issue and/or when carrying out a global assessment of likelihood of confusion.

5. Therefore, when comparing goods and/or services of an earlier Community collective mark according to Article 66(2) CTMR, consisting of geographical indication, with those of a Community individual mark, it is not, in the Applicant's opinion, decisive whether the goods and services in question are similar in regard to their nature, purpose, end users and/or distribution channels. Rather, it must be questioned whether the goods and/or services in question may have the same geographical origin.

6. The Applicant's interpretation of Article 66(2) CTMR results from

   1) the inner logic of Regulation No. 207/2009, in particular the fact that

      i. Article 66(2) CTMR constitutes and exception within Regulation No. 207/2009 as, according to Article 7(1)(c) CTMR, trademarks which consist exclusively of signs or indications which may serve, in trade, to designate the geographical origin of the goods or of rendering of the service shall not be registered,

      ii. according to Article 67(2) CTMR, the regulations governing use of a Community collective trade mark consisting of geographical indication must authorise *any* person whose goods or services originate in the geographical area concerned to become a member of the association which is the proprietor of the mark, and consequently, a Community collective mark consisting of geographical indication is *never* capable of distinguishing goods or services of the members of the association which is the proprietor of the mark from those of other undertakings.

   2) an interpretation of that provision in the light of Regulation No. 1151/2012 ([2]) and in the light of the TRIPs-Agreement, according to which geographical indications should enjoy a high level of protection, and according to which presentations of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin, in a manner which misleads the public as to the *geographical origin* of the good, should be prohibited.

7. The Applicant is of the opinion that the qualities established by the General Court in connection with DARJEELING can also be transferred to services such as business consultancy or telecommunication services, and are able to strengthen the power of attraction of the contested mark in that regard. Further, the Applicant points out that the General Court did not provide any substantiated grounds in its judgment, as to why the qualities associated with the mark DARJEELING could not be transferred to services in Class 35 and 38, which, in itself is an error in law.

([1]) Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark
OJ L 78, p. 1

([2]) Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs
OJ L 343, p. 1

Appeal brought on 15 December 2015 by The Tea Board against the judgment of the General Court (Eighth Chamber) delivered on 2 October 2015 in Case T-626/13: The Tea Board v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-675/15 P)

(2016/C 106/17)

Language of the case: English

Parties

Appellant: The Tea Board (represented by: M.C. Maier, A. Nordemann, Rechtsanwälte)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), Delta Lingerie

Form of order sought

The appellant claims that the Court should:

— annul the contested judgment of the General Court of 2 October 2015 in Case T-626/13 as far as the General Court dismissed the action with respect to the following services covered by the mark applied for in Classes 35 and 38:

Business consultancy with regard to the creation and operation of retail outlets and central purchasing agencies for retailing and advertising purposes; Sales promotion (for others), advertising, business management, business administration, on-line advertising on a computer network, distribution of advertising material (leaflets, flyers, free newspapers, samples), arranging newspaper subscriptions for others; Business information or enquiries; organization of events and exhibitions for commercial or advertising purposes, advertising management, rental of advertising space, radio and television advertising, advertising sponsorship. (Class 35)

Telecommunications, computer-aided transmission of messages and images, interactive television broadcasting services relating to the presentation of products, communications by computer terminals, communications (transmissions) on the open and closed world wide web. (Class 38)

— if necessary, remit the case back to the General Court,

— order the Defendant to bear the costs of the proceedings.

Pleas in law and main arguments

1. The Action seeks the partial annulment of the judgment of the General Court in Case T-626/13 of 2 October 2015 in so far as the General Court dismissed the action with respect to services covered by the contested mark in Classes 35 and 38.

2. The Action is based on two pleas in law: infringement of Article 8(1)(b) CTMR ([1]) and infringement of Article 8(5) CTMR.

3. The Applicant is of the opinion that the essential function of a Community collective mark according to Article 66(2) CTMR, consisting of an indication which serves to designate the geographical origin of the goods covered, is not to serve as an indication of commercial origin but only to guarantee the collective origin of the goods or services offered and sold under the mark, i.e. that the products come from an undertaking which is located in the geographical region adopted as a Community collective mark and which is entitled to use the Community collective mark.

4. Consequently, in the Applicant's view it must be concluded that, in the framework of Article 8(1)(b) CTMR, the geographical origin must be taken into account as a relevant factor- either when assessing the similarity of the goods and/or services at issue and/or when carrying out a global assessment of likelihood of confusion.

5. Therefore, when comparing goods and/or services of an earlier Community collective mark according to Article 66(2) CTMR, consisting of geographical indication, with those of a Community individual mark, it is not, in the Applicant's opinion, decisive whether the goods and services in question are similar in regard to their nature, purpose, end users and/or distribution channels. Rather, it must be questioned whether the goods and/or services in question may have the same geographical origin.

6. The Applicant's interpretation of Article 66(2) CTMR results from

   1) the inner logic of Regulation No. 207/2009, in particular the fact that

      i. Article 66(2) CTMR constitutes and exception within Regulation No. 207/2009 as, according to Article 7(1)(c) CTMR, trademarks which consist exclusively of signs or indications which may serve, in trade, to designate the geographical origin of the goods or of rendering of the service shall not be registered,

      ii. according to Article 67(2) CTMR, the regulations governing use of a Community collective trade mark consisting of geographical indication must authorise *any* person whose goods or services originate in the geographical area concerned to become a member of the association which is the proprietor of the mark, and consequently, a Community collective mark consisting of geographical indication is *never* capable of distinguishing goods or services of the members of the association which is the proprietor of the mark from those of other undertakings.

   2) an interpretation of that provision in the light of Regulation No. 1151/2012 ([2]) and in the light of the TRIPs-Agreement, according to which geographical indications should enjoy a high level of protection, and according to which presentations of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin, in a manner which misleads the public as to the *geographical origin* of the good, should be prohibited.

7. The Applicant is of the opinion that the qualities established by the General Court in connection with DARJEELING can also be transferred to services such as business consultancy or telecommunication services, and are able to strengthen the power of attraction of the contested mark in that regard. Further, the Applicant points out that the General Court did not provide any substantiated grounds in its judgment, as to why the qualities associated with the mark DARJEELING could not be transferred to services in Class 35 and 38, which, in itself is an error in law.

([1]) Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark
OJ L 78, p. 1

([2]) Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs
OJ L 343, p. 1

Appeal brought on 15 December 2015 by The Tea Board against the judgment of the General Court (Eighth Chamber) delivered on 2 October 2015 in Case T-627/13: The Tea Board v Office for Harmonisation in the Internal Market (Trade Marks and Designs)

(Case C-676/15 P)

(2016/C 106/18)

Language of the case: English

Parties

Appellant: The Tea Board (represented by: M.C. Maier, A. Nordemann, Rechtsanwälte)

Other parties to the proceedings: Office for Harmonisation in the Internal Market (Trade Marks and Designs), Delta Lingerie

Form of order sought

The appellant claims that the Court should:

— annul the contested judgment of the General Court of 2 October 2015 in Case T-627/13 as far as the General Court dismissed the action with respect to the following services covered by the mark applied for in Classes 35 and 38:

Business consultancy with regard to the creation and operation of retail outlets and central purchasing agencies for retailing and advertising purposes; Sales promotion (for others), advertising, business management, business administration, on-line advertising on a computer network, distribution of advertising material (leaflets, flyers, free newspapers, samples), arranging newspaper subscriptions for others; Business information or enquiries; organization of events and exhibitions for commercial or advertising purposes, advertising management, rental of advertising space, radio and television advertising, advertising sponsorship. (Class 35)

Telecommunications, computer-aided transmission of messages and images, interactive television broadcasting services relating to the presentation of products, communications by computer terminals, communications (transmissions) on the open and closed world wide web. (Class 38)

— if necessary, remit the case back to the General Court,

— order the Defendant to bear the costs of the proceedings.

Pleas in law and main arguments

1. The Action seeks the partial annulment of the judgment of the General Court in Case T-627/13 of 2 October 2015 in so far as the General Court dismissed the action with respect to services covered by the contested mark in Classes 35 and 38.

2. The Action is based on two pleas in law: infringement of Article 8(1)(b) CTMR ([1]) and infringement of Article 8(5) CTMR.

3. The Applicant is of the opinion that the essential function of a Community collective mark according to Article 66(2) CTMR, consisting of an indication which serves to designate the geographical origin of the goods covered, is not to serve as an indication of commercial origin but only to guarantee the collective origin of the goods or services offered and sold under the mark, i.e. that the products come from an undertaking which is located in the geographical region adopted as a Community collective mark and which is entitled to use the Community collective mark.

4. Consequently, in the Applicant's view it must be concluded that, in the framework of Article 8(1)(b) CTMR, the geographical origin must be taken into account as a relevant factor- either when assessing the similarity of the goods and/or services at issue and/or when carrying out a global assessment of likelihood of confusion.

5. Therefore, when comparing goods and/or services of an earlier Community collective mark according to Article 66(2) CTMR, consisting of geographical indication, with those of a Community individual mark, it is not, in the Applicant's opinion, decisive whether the goods and services in question are similar in regard to their nature, purpose, end users and/or distribution channels. Rather, it must be questioned whether the goods and/or services in question may have the same geographical origin.

6. The Applicant's interpretation of Article 66(2) CTMR results from

   1) the inner logic of Regulation No. 207/2009, in particular the fact that

      i. Article 66(2) CTMR constitutes and exception within Regulation No. 207/2009 as, according to Article 7(1)(c) CTMR, trademarks which consist exclusively of signs or indications which may serve, in trade, to designate the geographical origin of the goods or of rendering of the service shall not be registered,

      ii. according to Article 67(2) CTMR, the regulations governing use of a Community collective trade mark consisting of geographical indication must authorise *any* person whose goods or services originate in the geographical area concerned to become a member of the association which is the proprietor of the mark, and consequently, a Community collective mark consisting of geographical indication is *never* capable of distinguishing goods or services of the members of the association which is the proprietor of the mark from those of other undertakings.

   2) an interpretation of that provision in the light of Regulation No. 1151/2012 ([2]) and in the light of the TRIPs-Agreement, according to which geographical indications should enjoy a high level of protection, and according to which presentations of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin, in a manner which misleads the public as to the *geographical origin* of the good, should be prohibited.

7. The Applicant is of the opinion that the qualities established by the General Court in connection with DARJEELING can also be transferred to services such as business consultancy or telecommunication services, and are able to strengthen the power of attraction of the contested mark in that regard. Further, the Applicant points out that the General Court did not provide any substantiated grounds in its judgment, as to why the qualities associated with the mark DARJEELING could not be transferred to services in Class 35 and 38, which, in itself is an error in law.

([1]) Council Regulation (EC) No 207/2009 of 26 February 2009 on the Community trade mark
OJ L 78, p. 1

([2]) Regulation (EU) No 1151/2012 of the European Parliament and of the Council of 21 November 2012 on quality schemes for agricultural products and foodstuffs
OJ L 343, p. 1

Request for a preliminary ruling from the Bundesgerichtshof (Germany) lodged on 16 December 2015 — Mohammad Zadeh Khorassani v Kathrin Pflanz

(Case C-678/15)

(2016/C 106/19)

Language of the case: German

Referring court

Bundesgerichtshof

Parties to the main proceedings

Applicant: Mohammad Zadeh Khorassani

Defendant: Kathrin Pflanz

Question referred

Is the reception and transmission of an order which relates to a portfolio management (Article 4(1)(9) of the MiFID) an investment service within the meaning of the first sentence of Article 4(1)(2) ([1]) in conjunction with point 1 of Section A of Annex I to the MiFID?

([1]) Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ 2004 L 145, p. 1).

Request for a preliminary ruling from the Lietuvos Aukščiausiasis Teismas (Lithuania) lodged on 21 December 2015 — Agnieška Anisimovienė and Others

(Case C-688/15)

(2016/C 106/20)

Language of the case: Lithuanian

Referring court

Lietuvos Aukščiausiasis Teismas

Parties to the main proceedings

Appellants in cassation: Agnieška Anisimovienė and Others

Other parties: AB bankas 'Snoras', in liquidation; VĮ 'Indėlių ir investicijų draudimas'; AB 'Šiaulių bankas', successor to the rights and obligations of AB bankas 'FINASTA'

Questions referred

1. Is the Deposit Directive ([1]) to be interpreted as meaning that funds debited with the persons' consent or transferred or paid by those persons themselves into an account opened in the name of a credit institution held at another credit institution may be regarded as a deposit under that directive?

2. Are Articles 7(1) and 8(3) of the Deposit Directive, taken together, to be understood as meaning that a deposit insurance payment up to the amount specified in Article 7(1) must be made to every person whose claim can be established before the date on which the determination or ruling referred to in Article 1(3)(i) and (ii) of the Deposit Directive is adopted?

3. For the purposes of the Deposit Directive, is the definition of a '*normal* banking transaction' relevant for the interpretation of the concept of a deposit as a credit balance deriving from banking transactions? Is that definition also to be taken into account when interpreting the concept of a deposit in national legal measures which have implemented the Deposit Directive?

4. If the third question is answered in the affirmative, how is the concept of a normal banking transaction used in Article 1 (1) of the Deposit Directive to be understood and interpreted:

   (a) what banking transactions should be regarded as normal or what criteria should be the basis for determining whether a specific banking transaction is a normal one?

   (b) is the concept of a normal banking transaction to be assessed having regard to the objective of the banking transactions performed or to the parties between whom such banking transactions are carried out?

   (c) is the concept, used in the Deposit Directive, of a deposit as a credit balance deriving from normal banking transactions to be interpreted as covering only cases where all the transactions resulting in the creation of such a balance are regarded as normal?

5. Where funds fall outside the definition of a deposit under the Deposit Directive but the Member State has chosen to implement the Deposit Directive and the Investor Directive ([2]) in national law in such a way that funds to which the depositor has claims arising from a credit institution's obligation to provide investment services are also regarded as a deposit, can the cover for deposits be applied only after it has been determined that in a specific case the credit institution acted as an investment firm and funds were transferred to it to carry out investment business/activities, within the meaning of the Investor Directive and MiFID? ([3])

([1]) Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes (OJ 1994 L 135, p. 5).

([2]) Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes (OJ 1997 L 84, p. 22).

([3]) Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ 2004 L 145, p. 1).

Appeal brought on 17 December 2015 by European Commission against the judgment of the General Court (Fifth Chamber) delivered on 7 October 2015 in Case T-689/13: Bilbaína de Alquitranes e.a. v Commission

(Case C-691/15 P)

(2016/C 106/21)

Language of the case: English

Parties

Appellant: European Commission (represented by: P.J. Loewenthal, K. Talabér-Ritz, agents)

Other parties to the proceedings: Bilbaína de Alquitranes, SA, Deza, a.s., Industrial Química del Nalón, SA, Koppers Denmark A/S, Koppers UK Ltd, Koppers Netherlands BV, Rütgers basic aromatics GmbH, Rütgers Belgium NV, Rütgers Poland Sp. z o. o., Bawtry Carbon International Ltd, Grupo Ferroatlántica, SA, SGL Carbon GmbH, SGL Carbon GmbH, SGL Carbon, SGL Carbon, SA, SGL Carbon Polska S.A., ThyssenKrupp Steel Europe AG, Tokai erftcarbon GmbH, European Chemicals Agency (ECHA), GrafTech Iberica, SL

Form of order sought

The appellant claims that the Court should:

— set aside the judgment of the General Court (Fifth Chamber) of 7 October 2015 in Case T-689/13 Bilbaína de Alquitranes e.a. v Commission EU:T:2015:767;

— refer the case back to the General Court for consideration; and

— reserve the costs of the present proceedings.

Pleas in law and main arguments

In the contested judgment, the General Court partially annulled Commission Regulation (EU) No 944/2013 ([1]) of 2 October 2013 amending, for the purposes of its adaptation to technical and scientific progress, Regulation (EC) No 1272/2008 of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures.

The Commission puts forward three grounds in support of its appeal of the contested judgment.

First, the Commission alleges the General Court to have failed to fulfil its duty to state reasons under Article 36 and 53, paragraph 1, of the Statute of the Court of Justice. In the contested judgment, the General Court considers the Commission to have committed a manifest error of assessment in that, by classifying the substance pitch, coal tar, high-temp (CTPHT) on the basis of its constituents for hazard classification purposes using the summation method, it failed to comply with its obligation to take into consideration all the relevant factors and circumstances so as to take due account of the proportion in which those constituents are present in CTPHT and their chemical effects, in particular the low solubility of CTPHT as a whole. It is not clear from the contested judgment, however, whether the General Court partially annulled the regulation at issue for this reason because the Commission was wrong to apply the summation method for classification purposes, and should have applied another classification method, or because the Commission wrongly applied the summation method.

Second, the Commission alleges the General Court to have infringed the CLP Regulation in concluding that the Commission had committed a manifest error of assessment by adopting the contested classification without considering the solubility of the substance as a whole. The first branch of this ground of appeal is based on the assumption that the General Court partially annulled the regulation at issue because it considered that the Commission was wrong to apply the summation method to classify CTPHT as hazardous to the aquatic environment, in which case the General Court infringed the CLP Regulation since the test data available on CTPHT was deemed inappropriate to classify the substance directly under the CLP Regulation. This, followed by the fact that bridging principles could not be applied, bound the Commission to use the summation method in the present case. The second branch of this ground of appeal is based on the assumption that the General Court partially annulled the regulation at issue because it considered the Commission to have misapplied the summation method, in which case the General Court infringed the CLP Regulation since that regulation does not require the solubility of the substance as a whole to be considered when applying that method.

Third, the Commission considers the General Court to have infringed Union law by exceeding the limits of its review of the legality of the contested regulation and to have distorted the evidence upon which the regulation at issue was adopted.

([1]) OJ L 261, p. 5

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 21 December 2015 — Security Service Srl v Ministero dell'Interno and Others

(Case C-692/15)

(2016/C 106/22)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicant: Security Service Srl

Defendants: Ministero dell'Interno, Questura di Napoli, Questura di Roma

Questions referred

1. [Is the judgment of the Court of Justice of the European Union in Case C-465/2005 *Commission* v *Italy* (EU:C:2007:781), in which that court] found that the Italian State was in breach of the principles enshrined in Articles 43 and 49 of the EC Treaty (freedom of establishment and freedom to provide services), stating that:

   (a) it is obligatory to swear an oath of allegiance to the Italian Republic in order to work as a private security guard;

   (b) private security guard activities may be pursued by service providers established in another Member State only after authorisation of limited territorial validity has been granted by the Prefetto (provincial governor) without taking account of the obligations to which such providers are already subject in their Member State of origin;

   (c) that authorisation is to be of limited territorial validity and is to be granted subject to consideration of the number and size of private security undertakings already operating in the area in question;

   (d) private security undertakings must have a place of business in each province in which they operate;

   (e) the staff of private security undertakings must be individually authorised to undertake private security work without taking account of the controls and verifications already carried out in the Member State of origin;

   (g) private security undertakings must have a minimum and/or maximum number of employees in order to obtain authorisation;

   (h) such undertakings must lodge a guarantee with the local Cassa depositi e prestiti;

   (i) the prices for private security services are to be fixed, with the approval of the Prefetto, within the limits of a predetermined margin for variation;

   [to be interpreted as] precluding, of itself, the provincial public security authority (the Questore) from imposing requirements regarding the provisions of services such as those at issue in this case, [which] make it compulsory to deploy a minimum number of security guards (two) for operations entailing the provisions of particular services?

2. Notwithstanding the fact that it is a new question, may the question referred to above may be said to be sufficiently analogous to the questions raised in Case C-462/2005 as to lead to the same outcome, on the basis of Articles 43 and 49 of the EC Treaty?

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 21 December 2015 — Il Camaleonte Srl v Questore di Napoli, Ministero dell'Interno

(Case C-693/15)

(2016/C 106/23)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicant: Il Camaleonte Srl

Defendants: Questore di Napoli, Ministero dell'Interno

Questions referred

1. [Is the judgment of the Court of Justice of the European Union in Case C 465/2005 Commission v Italy (EU:C:2007:781), in which that court] found that the Italian State was in breach of the principles enshrined in Articles 43 and 49 of the EC Treaty (freedom of establishment and freedom to provide services), stating that:

   (a) it is obligatory to swear an oath of allegiance to the Italian Republic in order to work as a private security guard;

   (b) private security guard activities may be pursued by service providers established in another Member State only after authorisation of limited territorial validity has been granted by the Prefetto (provincial governor) without taking account of the obligations to which such providers are already subject in their Member State of origin;

   (c) that authorisation is to be of limited territorial validity and is to be granted subject to consideration of the number and size of private security undertakings already operating in the area in question;

   (d) private security undertakings must have a place of business in each province in which they operate;

   (e) the staff of private security undertakings must be individually authorised to undertake private security work without taking account of the controls and verifications already carried out in the Member State of origin;

   (g) [sic] private security undertakings must have a minimum and/or maximum number of employees in order to obtain authorisation;

   (h) such undertakings must lodge a guarantee with the local Cassa depositi e prestiti;

   (i) the prices for private security services are to be fixed, with the approval of the Prefetto, within the limits of a predetermined margin for variation;

   [to be interpreted as] precluding, of itself, the provincial public security authority (the Questore) from imposing requirements regarding the provisions of services such as those at issue in this case, [which] make it compulsory to deploy a minimum number of security guards (two) for operations entailing the provisions of particular services?

2. Notwithstanding the fact that it is a new question, may the question referred to above may be said to be sufficiently analogous to the questions raised in Case C-462/2005 as to lead to the same outcome, on the basis of Articles 43 and 49 of the EC Treaty?

Request for a preliminary ruling from the Consiglio di Stato (Italy) lodged on 21 December 2015 — Vigilanza Privata Turris Srl v Questore di Napoli

(Case C-694/15)

(2016/C 106/24)

Language of the case: Italian

Referring court

Consiglio di Stato

Parties to the main proceedings

Applicant: Vigilanza Privata Turris Srl

Defendant: Questore di Napoli

Questions referred

1. [Is the judgment of the Court of Justice of the European Union in Case C 465/2005 *Commission* v *Italy* (EU:C:2007:781), in which that court] found that the Italian State was in breach of the principles enshrined in Articles 43 and 49 of the EC Treaty (freedom of establishment and freedom to provide services), stating that:

   (a) it is obligatory to swear an oath of allegiance to the Italian Republic in order to work as a private security guard;

   (b) private security guard activities may be pursued by service providers established in another Member State only after authorisation of limited territorial validity has been granted by the Prefetto (provincial governor) without taking account of the obligations to which such providers are already subject in their Member State of origin;

   (c) that authorisation is to be of limited territorial validity and is to be granted subject to consideration of the number and size of private security undertakings already operating in the area in question;

   (d) private security undertakings must have a place of business in each province in which they operate;

   (e) the staff of private security undertakings must be individually authorised to undertake private security work without taking account of the controls and verifications already carried out in the Member State of origin;

   (g) [sic] private security undertakings must have a minimum and/or maximum number of employees in order to obtain authorisation;

   (h) such undertakings must lodge a guarantee with the local Cassa depositi e prestiti;

   (i) the prices for private security services are to be fixed, with the approval of the Prefetto, within the limits of a predetermined margin for variation;

   [to be interpreted as] precluding, of itself, the provincial public security authority (the Questore) from imposing requirements regarding the provisions of services such as those at issue in this case, [which] make it compulsory to deploy a minimum number of security guards (two) for operations entailing the provisions of particular services?

2. Notwithstanding the fact that it is a new question, may the question referred to above may be said to be sufficiently analogous to the questions raised in Case C-462/2005 as to lead to the same outcome, on the basis of Articles 43 and 49 of the EC Treaty?

Request for a preliminary ruling from the Tribunale Amministrativo Regionale per il Piemonte (Italy) lodged on 28 December 2015 — MB srl v Società Metropolitana Acque Torino (SMAT)

(Case C-697/15)

(2016/C 106/25)

Language of the case: Italian

Referring court

Tribunale Amministrativo Regionale per il Piemonte

Parties to the main proceedings

Applicant: MB srl

Defendant: Società Metropolitana Acque Torino (SMAT)

Question referred

Do the Community principles of the protection of legitimate expectations and legal certainty, together with the principles of the free movement of goods, the freedom of establishment and the freedom to provide services, laid down in the Treaty on the Functioning of the European Union (TFEU), as well as the principles deriving therefrom, such as equality of treatment, non-discrimination, mutual recognition, proportionality and transparency, referred to (most recently) in Directive 2014/24/EU, ([1]) preclude national legislation, such as the Italian legislation founded on the combined provisions of Articles 87(4) and 86(3a) of Legislative Decree No 163 of 2006 and Article 26(6) of Legislative Decree No 81 of 2008, as interpreted, with a view to securing proper respect for, and uniform application of, the law, pursuant to Article 99 of the Code of Administrative Procedure, by judgments No 3 and No 9 of 2015 of the Plenary Assembly of the Consiglio di Stato, according to which the failure to list the corporate safety and security costs separately in tenders in a procedure for the award of a public works contract inevitably results in the exclusion of the tendering undertaking concerned, even in the case where the obligation to list that information separately was not set out either in the tender rules or on the attached form to be completed for the submission of the tender, and even though, in substantive terms, the tender in question took into account the minimum costs of corporate safety and security?

([1]) Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ 2014 L 94, p. 65).

Request for a preliminary ruling from the Conseil d'État (France) lodged on 6 January 2016 — Holcim France SAS, successor in law to Euro Stockage v Ministre des finances et des comptes publics

(Case C-6/16)

(2016/C 106/26)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Appellants: Holcim France SAS, successor in law to Euro Stockage, Enka SA

Respondent: Ministre des finances et des comptes publics

Questions referred

1. If the national legislation of a Member State uses in domestic law the option offered by Article 1(2) of Directive 90/435/EEC of 23 July 1990, ([1]) is there scope for review of the measures or agreements adopted in order to give effect to that option under EU primary law?

2. Must the provisions of Article 1(2) of that Directive, which confer upon Member States broad discretion to determine which provisions are *'required for the prevention of fraud or abuse'*, be interpreted as precluding a Member State from adopting a mechanism aimed at excluding from the benefit of the exemption the dividends distributed to a legal person controlled directly or indirectly by one or more residents of States that are not members of the Union, unless that legal person provides proof that the principal purpose or one of the principal purposes of the chain of interests is not to benefit from the exemption?

3. (a) If the compatibility with EU law of the 'anti-abuse' mechanism mentioned above should have to be assessed having regard to the provisions of the Treaty too, must it be examined, having regard to the purpose of the legislation at issue, in the light of the provisions of Article 43 of the Treaty establishing the European Community, now Article 49 of the Treaty on the Functioning of the European Union, even though the company receiving the dividend distribution is controlled directly or indirectly, as a result of a chain of interests which has among its principal purposes the benefit of the exemption, by one or more residents of third States that may not avail themselves of freedom of establishment?

   (b) If the answer to the preceding question is not affirmative, must that compatibility be examined in the light of the provisions of Article 56 of the Treaty establishing the European Community, now Article 63 of the Treaty on the Functioning of the European Union?

4. Must the provisions cited above be interpreted as precluding national legislation from excluding from the exemption from withholding tax the dividends paid by a company in one Member State to a company established in another Member State, if those dividends are received by a legal person controlled directly or indirectly by one or more residents of States that are not members of the European Union, unless that legal person establishes that the principal purpose or one of the principal purposes of that chain of interests is not to benefit from the exemption?

([1]) Council Directive 90/435/EEC of 23 July 1990 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (OJ 1990 L 225, p. 6).

Request for a preliminary ruling from the Conseil d'État (France) lodged on 11 January 2016 — Euro Park Service, having assumed the rights and obligations of Cairnbulg Nanteuil v Ministre des finances et des comptes publics

(Case C-14/16)

(2016/C 106/27)

Language of the case: French

Referring court

Conseil d'État

Parties to the main proceedings

Appellant: Euro Park Service, having assumed the rights and obligations of Cairnbulg Nanteuil

Respondent: Ministre des finances et des comptes publics

Questions referred

1. When national legislation of a Member State makes use, in domestic law, of the option under Article 11(1) of Council Directive 90/434/EEC of 23 July 1990, as amended, on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States, ([1]) is there scope for the measures adopted for the implementation of that option to be reviewed in the light of primary EU law?

2. If so, must the provisions of Article 43 of the Treaty establishing the European Union, now Article 49 of the Treaty on the Functioning of the European Union, be interpreted as precluding national legislation, aimed at preventing tax evasion or avoidance, from imposing a condition that the use of the common system of taxation applicable to mergers and transactions treated as such is to be subject to a process of prior approval only as regards transfers made to foreign legal persons, but not transfers made to legal persons incorporated under national law?

([1]) OJ 1990 L 225, p. 1.

Appeal brought on 13 January 2016 by Al-Bashir Mohammed Al-Faqih, Ghunia Abdrabbah, Taher Nasuf, Sanabel Relief Agency Ltd against the judgment of the General Court (Seventh Chamber) delivered on 28 October 2015 in Case T-134/11: Al-Bashir Mohammed Al-Faqih, Ghunia Abdrabbah, Taher Nasuf, Sanabel Relief Agency Ltd v European Commission

(Case C-19/16 P)

(2016/C 106/28)

Language of the case: English

Parties

Appellants: Al-Bashir Mohammed Al-Faqih, Ghunia Abdrabbah, Taher Nasuf, Sanabel Relief Agency Ltd (represented by: N. Garcia-Lora, Solicitor, E. Grieves, Barrister)

Other parties to the proceedings: European Commission, Council of the European Union, United Kingdom of Great Britain and Northern Ireland

Form of order sought

The appellants claim that the Court should:

— set aside the contested decision of 28 October 2015

— substitute its own decision and annul the contested measures

— order the Commission, the Council and the United Kingdom to pay the costs in the General Court and in the Court of Justice proceedings.

Pleas in law and main arguments

This appeal advances 4 pleas in law.

Ground 1 disputes the Court's decision that the challenges to the substantive decision to list the first three applicants were not properly raised before the Court. The Court failed to properly characterise pleading IV as a challenge to the Commission's assessment of the facts. The Court failed to take into account the applicants' observations, which ought to have been considered because a) the Court had requested them, b) they had been served prior to the defendant lodging its defence and c) the applicants had always indicated that they wished to challenge the assessment of facts. The Court's approach was inconsistent with Ayadi v Commission T-527/09 (14.4.15)

Ground 2 challenges the Court's decision on the basis that it failed to apply the binding authority of Kadi II. The Court failed to determine for itself whether or not the allegations in the statement of reasons were well founded.

Ground 3 challenges the Court's finding that the Commission conducted a careful and independent analysis of the justification for listing. The Court's finding that the Commission did conduct such an analysis was unsustainable in light of the facts of the case and previous judicial findings in other similar cases.

Ground 4 challenges the Court's decision that Sanabel had no legal standing on the basis that the court erred in its understanding of the law. Sanabel's legal standing is not contingent upon parallel characterisations under domestic law, but upon whether it is deemed capable of being so designated.

Reference for a preliminary ruling from First-tier Tribunal (Tax Chamber) (United Kingdom) made on 25 January 2016 — Compass Contract Services Limited v Commissioners for Her Majesty's Revenue & Customs

(Case C-38/16)

(2016/C 106/29)

Language of the case: English

Referring court

First-tier Tribunal (Tax Chamber)

Parties to the main proceedings

Applicant: Compass Contract Services Limited

Defendant: Commissioners for Her Majesty's Revenue & Customs

Questions referred

1. Does the UK's different treatment of output tax *Fleming* claims (which could be made for periods ending before 4 December 1996) and input tax *Fleming* claims (which could be made for periods ending before 1 May 1997 — i.e. later than output tax *Fleming* claims) result in:

   a) a breach of the EU law principle of equal treatment; and/or

   b) a breach of the EU law principle of fiscal neutrality; and/or

   c) a breach of the EU law principle of effectiveness; and/or

   d) a breach of any other relevant EU law principle?

2. If the answer to any of Question 1(a) to 1(d) is affirmative, how should output tax *Fleming* claims relating to the period from 4 December 1996 to 30 April 1997 be treated?

Appeal brought on 4 February 2016 by European Bicycle Manufacturers Association against the judgment of the General Court (Seventh Chamber) delivered on 26 November 2015 in Case T-425/13: Giant (China) Co. Ltd v Council of the European Union

(Case C-61/16 P)

(2016/C 106/30)

Language of the case: English

Parties

Appellant: European Bicycle Manufacturers Association (represented by: L. Ruessmann, avocat, J. Beck, solicitor)

Other parties to the proceedings: Giant (China) Co. Ltd, Council of the European Union, European Commission

Form of order sought

The appellant claims that the Court should:

— declare the Appeal admissible and well-founded;

— set aside the General Court's judgment;

— rule on the substance and dismiss the Application for Annulment or refer the case back to the General Court for a decision on the substance of the Application for Annulment; and

— order the Applicant before the General Court to pay the Appellant's costs for the Appeal and the Intervention before the General Court.

Pleas in law and main arguments

— First ground of appeal: The General Court committed an error of law by applying an incorrect legal analysis of the Council's application of Article 18 of the Basic Regulation. Contrary to the General Court's findings, Regulation 502/2013 ([1]) applied Article 18(1) globally to the Giant group because the Institutions lacked complete and comprehensive information about the related companies, and not only to information related to the export price of the group.

— Second ground of appeal: The General Court committed an error of law in finding that the Council could not consider Giant's failure to provide basic threshold information as non-cooperation within the meaning of Article 18(1) of the Basic Regulation. The information required was basic threshold information necessary to permit the Institutions to obtain a complete and accurate picture of the Giant group and not providing this information constituted therefore a lack of cooperation that cast doubt on the reliability of the information that was provided by Giant.

— Third ground of appeal: The General Court committed an error of law in finding that there would be no risk of circumvention if Giant were granted an individual anti-dumping duty but Jinshan would not. The Institutions' concerns regarding circumvention by related companies in the present case are justified and constitute a valid additional ground for the rejection of the request for an individual antidumping duty by Giant.

([1]) Council Regulation (EU) No 502/2013 of 29 May 2013 amending Implementing Regulation (EU) No 990/2011 imposing a definitive anti-dumping duty on imports of bicycles originating in the People's Republic of China following an interim review pursuant to Article 11(3) of Regulation (EC) No 1225/2009 OJ L 153, p. 17

GENERAL COURT

Judgment of the General Court of 4 February 2016 — GFKL Financial Services v Commission

(Case T-620/11) ([1])

(State aid — German tax legislation concerning loss carry-forward to future tax years (Sanierungsklausel) — Decision declaring the aid incompatible with the internal market — Action for annulment — Individual concern — Admissibility — Concept of State aid — Selectivity — Nature and general scheme of the tax system — State resources — Obligation to state reasons — Legitimate expectations)

(2016/C 106/31)

Language of the case: German

Parties

Applicant: GFKL Financial Services AG (Essen, Germany) (represented initially by M. Schweda, S. Schultes-Schnitzlein, J. Eggers and M. Knebelsberger, and subsequently by M. Schweda, J. Eggers, M. Knebelsberger and F. Loose, lawyers)

Defendant: European Commission (represented initially by T. Maxian Rusche, M. Adam and R. Lyal, and subsequently by T. Maxian Rusche, R. Lyal and M. Noll-Ehlers, acting as Agents)

Intervener in support of the applicant: Federal Republic of Germany (represented by: T. Henze and K. Petersen, acting as Agents)

Re:

Application for annulment of Commission Decision 2011/527/EU of 26 January 2011 on State aid C 7/10 (ex CP 250/09 and NN 5/10) implemented by Germany — Scheme for the carry-forward of tax losses in the case of restructuring of companies in difficulty (Sanierungsklausel) (OJ 2011 L 235, p. 26).

Operative part of the judgment

The Court:

1. *Rejects the objection of inadmissibility;*

2. *Dismisses the action as unfounded;*

3. *Orders GFKL Financial Services AG to bear its own costs and to pay two thirds of the European Commission's costs, and orders the Commission to bear one third of its own costs;*

4. *Orders the Federal Republic of Germany to bear its own costs.*

([1]) OJ C 39, 11.2.2012.

Judgment of the General Court of 4 February 2016 — Isotis v Commission

(Case T-562/13) ([1])

(Arbitration clause — Competitiveness and Innovation Framework Programme — REACH112 contract — Reimbursement of sums advanced — Eligible costs)

(2016/C 106/32)

Language of the case: Greek

Parties

Applicant: Koinonia Tis Pliroforias Anoichti Stis Eidikes Anagkes — Isotis (Athens, Greece) (represented by: S. Skliris, lawyer)

Defendant: European Commission (represented by: L. Di Paolo and S. Lejeune, acting as Agents, and initially by E. Petritsi, then by E. Roussou, lawyers)

Re:

First, applications based on Article 272 TFEU, seeking, primarily, to have the Commission's request seeking reimbursement of pre-financing of EUR 47 197,93 paid to the applicant under contract No 238940, 'REsponding to All Citizens needing Help (REACH112)', concluded between the Commission and the applicant to be declared unfounded, and, alternatively, to have the Commission's request seeking reimbursement of that pre-financing as regards the expenses submitted to the Commission for the first reference period of the REACH112 project for a sum of EUR 13 821,12 to be declared unfounded, and, second, counterclaim seeking to order the applicant to reimburse the pre-financing unduly paid in the context of that contract and interest for late payment.

Operative part of the judgment

The Court:

1) *Declares that there is no need to adjudicate on Koinonia Tis Pliroforias Anoichti Stis Eidikes Anagkes — Isotis' claim seeking a declaration that as the general conditions of the Sixth Framework Programme do not apply to the contract at issue, it cannot be liable for liquidated damages under that contract and that, therefore, the European Commission infringed the contract at issue by declaring its intention to claim such damages;*

2) *Declares that Koinonia Tis Pliroforias Anoichti Stis Eidikes Anagkes — Isotis' application seeking a finding that there is no basis for the claim for reimbursement of pre-financing which it has received under contract No. 238940 'Responding to All Citizens Needing Help (REACH112)' is upheld as regards the costs declared by it for the first reference period of the REACH112 project;*

3) *Declares that Koinonia Tis Pliroforias Anoichti Stis Eidikes Anagkes — IsoTis' action is dismissed as to the remainder;*

4) *Declares that the Commission's application seeking to order reimbursement by Koinonia Tis Pliroforias Anoichti Stis Eidikes Anagkes — Isotis of pre-financing which it has received under contract No. 238940 'Responding to All Citizens Needing Help (REACH112)' is rejected as regards the costs declared by it for the first reference period of the REACH112 project;*

5) *Orders that Koinonia Tis Pliroforias Anoichti Stis Eidikes Anagkes — IsoTis shall pay the Commission the amount of EUR 33 376,81, plus interest at the rate of 4 % per annum as of 29 October 2013 and until full payment of that amount;*

6) *Orders that Koinonia Tis Pliroforias Anoichti Stis Eidikes Anagkes — IsoTis and the Commission shall each bear their own costs.*

(1) OJ C 9, 11.1.2014.

Judgment of the General Court of 4 February 2016 — Italian International Film v EACEA

(Case T-676/13) (1)

(Support programme for the European audiovisual sector (MEDIA 2007) — Measures of support for the transnational distribution of European films — Call for proposals in connection with the 'selective' scheme 2013 — EACEA act informing the applicant of the rejection of its application for the film 'Only God Forgives' — EACEA act confirming the rejection but stating new reasons — Powers — Distribution of tasks between the Commission and the EACEA — Circumscribed powers — Actions for annulment — Challengeable act — Admissibility — Obligation to state reasons — Permanent Guidelines 2012-2013 — Material or physical distribution agreement — Not communicated in advance to the EACEA — Application not eligible)

(2016/C 106/33)

Language of the case: Italian

Parties

Applicant: Italian International Film Srl (Rome, Italy) (represented by: A. Fratini, B. Bettelli and M. Bottino, lawyers)

Defendant: Education, Audiovisual and Culture Executive Agency (EACEA) (represented by: H. Monet and D. Homann, acting as Agents, and D. Fosselard and A. Duron, lawyers)

Re:

Action for annulment of the decision rejecting the applicant's application for a grant for the film 'Only God Forgives' following call for proposals EACEA/21/12 MEDIA 2007 — Support for the transnational distribution of European films — the 'Selective' scheme 2013 (OJ 2012 C 300, p. 5), published pursuant to Decision No 1718/2006/EC of the European Parliament and of the Council of 15 November 2006 concerning the implementation of a programme of support for the European audiovisual sector (MEDIA 2007) (OJ 2006 L 327, p. 12) for the period from 1 January 2007 to 31 December 2013.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Italian International Film Srl and the Education, Audiovisual and Culture Executive Agency (EACEA) to bear their own costs.*

([1]) OJ C 45, 15.2.2014.

Judgment of the General Court of 5 February 2016 — Kicktipp v OHIM — Società Italiana Calzature (kicktipp)

(Case T-135/14) ([1])

(Community trade mark — Opposition proceedings — Application for Community word mark kicktipp — Earlier national word mark KICKERS — Rule 19 of Regulation (EC) No 2868/95 — Rule 98(1) of Regulation No 2868/95 — Relative ground for refusal — No likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009)

(2016/C 106/34)

Language of the case: English

Parties

Applicant: Kicktipp GmbH (Dusseldorf, Germany) (represented by: A. Dreyer, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: I. Harrington, acting as Agent)

Other party to the proceedings before the Board of Appeal of OHIM, intervener before the General Court: Società Italiana Calzature Srl (Milan, Italy) (represented by: G. Cantaluppi, lawyer)

Re:

Action brought against the decision of the Second Board of Appeal of OHIM of 12 December 2013 (Case R 1061/2012-2), relating to opposition proceedings between Società Italiana Calzature Srl and Kicktipp GmbH.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Second Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 12 December 2013 (Case R 1061/2012-2);*

2. *Orders OHIM to bear its own costs and to pay those incurred by Kicktipp GmbH;*

3. *Orders Società Italiana Calzature Srl to bear its own costs.*

([1]) OJ C 135, 5.5.2014.

Judgment of the General Court of 4 February 2016 — Meica v OHIM — Salumificio Fratelli Beretta (STICK MiniMINI Beretta)

(Case T-247/14) ([1])

(Community trade mark — Opposition proceedings — Application for the Community figurative mark STICK MiniMINI Beretta — Earlier Community word mark MINI WINI — Relative ground for refusal — No likelihood of confusion — Article 8(1)(b) of Regulation (EC) No 207/2009 — Article 8(3) of Regulation (EC) No 216/96)

(2016/C 106/35)

Language of the case: English

Parties

Applicant: Meica Ammerländische Fleischwarenfabrik Fritz Meinen GmbH & Co. KG (Edewecht, Germany) (represented by: S. Labesius, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: A. Poch, acting as Agent)

Other party to the proceedings before the Board of Appeal of OHIM, intervening before the General Court: Salumificio Fratelli Beretta SpA (Barzanò, Italy) (represented by: G. Ghisletti, F. Braga and P. Pozzi, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 14 February 2014 (Case R 1159/2013-4) relating to opposition proceedings between Meica Ammerländische Fleischwarenfabrik Fritz Meinen GmbH & Co. KG and Salumificio Fratelli Beretta SpA.

Operative part of the judgment

The Court:

1. *Annuls the decision of the Fourth Board of Appeal of the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) of 14 February 2014 (Case R 1159/2013-4) inasmuch as it rejects the submissions made by Meica Ammerländische Fleischwarenfabrik Fritz Meinen GmbH & Co. KG seeking a decision altering the decision of the Opposition Division in respect of the services in Class 43;*

2. *Dismisses the remainder of the action;*

3. *Orders Meica Ammerländische Fleischwarenfabrik Fritz Meinen GmbH & Co. KG, the Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM) and Salumificio Fratelli Beretta SpA to bear their own costs.*

([1]) OJ C 235, 21.7.2014.

Judgment of the General Court of 4 February 2016 — Italy v Commission

(Case T-686/14) ([1])

(EAGGF — Guarantee Section — EAGGF and EAFRD — Expenditure excluded from financing — Fruit and vegetables — Tomato processing sector — Aid to producer organisations — Expenditure incurred by Italy — Proportionality — Res judicata)

(2016/C 106/36)

Language of the case: Italian

Parties

Applicant: Italian Republic (represented by: G. Palmieri, acting as Agent, and G. Galluzzo, avvocato dello Stato)

Defendant: European Commission (represented by: D. Bianchi and K. Skelly, acting as Agents)

Re:

Application for annulment in part of Commission Implementing Decision 2014/458 of 9 July 2014 excluding from European Union financing certain expenditure incurred by the Member States under the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), under the European Agricultural Guarantee Fund (EAGF) and under the European Agricultural Fund for Rural Development (EAFRD) (OJ 2014 L 205, p. 62), in so far as it concerns the Italian Republic.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders the Italian Republic to pay the costs.*

([1]) OJ C 395, 10.11.2014.

Judgment of the General Court of 4 February 2016 — PRIMA v Commission

(Case T-722/14) ([1])

(Public service contracts — Tendering procedure — Support for the European Commission representative in Bulgaria in the context of the organization of public events — Rejection of tender submitted by a tenderer and award of the contract to another tenderer — Award criteria — Obligation to state reasons — Concept of relative advantages of the successful tender — Transparency)

(2016/C 106/37)

Language of the case: Bulgarian

Parties

Applicants: PRIMA — Produtsentska, reklamna, informatsionna i mediyna agentsia AD (Sofia, Bulgaria) (represented by: Y. Ruskov, lawyer)

Defendant: European Commission (represented by: L. Di Paolo, P. Mihaylova and D. Roussanov, acting as Agents)

Re:

Application for annulment of, first, the decision of the European Commission of 12 August 2014 rejecting the tender submitted by the applicant in the context of the call for tenders PO/2013 13/SOF relating to support for the European Commission representative in Bulgaria in the context of the organization of public events, and awarding the contract to another tenderer and, second, the 'subsequent decisions', including that of 12 September 2014 to conclude the contract for its performance.

Operative part of the judgment

The Court:

1) *Dismisses the action;*

2) *Orders PRIMA — Produtsentska, reklamna, informatsionna i mediyna agentsia AD to pay the costs.*

([1]) OJ C 462, 22.12.2014.

Judgment of the General Court of 5 February 2016 — Airpressure Bodyforming v OHIM (Slim legs by airpressure bodyforming)

(Case T-842/14) ([1])

(Community trade mark — Application for Community word mark Slim legs by airpressure bodyforming — Refusal of registration by the examiner — Absolute grounds for refusal — Descriptive character — Lack of descriptive character — Article 7(1)(b) and (c) of Regulation (EC) No 207/2009)

(2016/C 106/38)

Language of the case: German

Parties

Applicant: Airpressure Bodyforming GmbH (Berchtesgaden, Germany) (represented by: S. Merz, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: C. Martini and M. Fischer, acting as Agents)

Re:

Action brought against the decision of the Fifth Board of Appeal of OHIM of 29 October 2014 (Case R 1570/2014-5) concerning an application for registration of the word sign Slim legs by airporessure bodyforming as a Community trade mark.

Operative part of the judgment

The Court:

1. *Dismisses the action;*

2. *Orders Airpressure Bodyforming GmbH to pay the costs.*

([1]) OJ C 65, 23.3.2015.

Order of the General Court of 28 December 2015 — Skype v OHIM — Sky International (SKYPE)

(Case T-797/14) ([1])

(Community trade mark — Opposition proceedings — Withdrawal of the opposition — No need to adjudicate)

(2016/C 106/39)

Language of the case: English

Parties

Applicant: Skype Ultd (Dublin, Ireland) (represented by: A. Carboni and M. Browne, solicitors)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: P. Bullock, acting as Agent)

Other party to the proceedings before the Board of Appeal of OHIM intervening before the General Court: Sky International AG (Zug, Switzerland) (represented by: D. Rose and J. Curry, lawyers)

Re:

Action brought against the decision of the Fourth Board of Appeal of OHIM of 29 September 2014 (Case R 1075/2013-4), relating to opposition proceedings between Sky International AG and Skype.

Operative part of the order

1. *There is no longer any need to adjudicate on the action.*

2. *Skype Ultd and Sky International AG are ordered to bear their own costs and to each pay half of the costs incurred by the Office for Harmonisation in the Internal Market (trade marks and designs) (OHIM).*

(1) OJ C 46, 9.2.2015.

Order of the General Court of 26 January 2016 — Permapore v OHIM — José Joaquim Oliveira II — Jardins & Afins (Terraway)

(Case T-277/15) (1)

(Community trade mark — Opposition proceedings — Application for Community figurative mark Terraway — Earlier national and international word marks TERRAWAY — Partial rejection of the opposition — Failure to comply with the obligation to pay the appeal fee within the period prescribed — Decision of the Board of Appeal declaring that the appeal is deemed not to have been filed — Action manifestly lacking any basis in law)

(2016/C 106/40)

Language of the case: Portuguese

Parties

Applicant: Permapore Ltd (Nenagh, Ireland) (represented by: J. Sales, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (represented by: A. Schifko, acting as Agent)

Other party to the proceedings before the Board of Appeal of OHIM intervening before the General Court: José Joaquim Oliveira II — Jardins & Afins Lda (Grijó, Portugal) (represented by: M. Oehen Mendes, R. Duarte Morais, M. Ribeiro da Fonseca and S. Luís Dias, lawyers)

Re:

Application for annulment of the decision of the First Board of Appeal of OHIM of 5 March 2015 (Case R 2496/2014-1), relating to opposition proceedings between José Joaquim Oliveira II — Jardins & Afins Lda and Permapore Ltd.

Operative part of the order

1. *The action is dismissed.*

2. *Permapore Ltd is ordered to bear its own costs and pay those incurred by the by the Office for Harmonisation in the Internal Market (trade marks and designs) (OHIM).*

3. *José Joaquim Oliveira II — Jardins & Afins Lda is ordered to bear its own costs.*

(1) OJ C 245, 27.7.2015.

Action brought on 31 July 2015 — Voigt v Parliament

(Case T-618/15)

(2016/C 106/41)

Language of the case: German

Parties

Applicant: Udo Voigt (Brussels, Belgium) (represented by: P. Richter, lawyer)

Defendant: European Parliament

Form of order sought

The applicant claims that the Court should:

— annul the refusal of the President of the European Parliament to give access to the rooms of the European Parliament for the applicant's press-conference planned for 16 June 2015;

— annul the ban from entering the premises of the European Parliament imposed by the President of the European Parliament on the Russian participants of the press conference of 16 June 2015;

— order the defendant to pay the costs.

Pleas in law and main arguments

In support of the action, the applicant relies on two pleas in law.

1. First plea in law: infringement of the Treaties

   — The applicant claims that the refusal of the use of the requested rooms and the ban imposed on the Russian participants of the press conference from entering the European Parliament infringes the Treaties or the relevant provisions for their enforcement.

   — In accordance with the rules of the President of the European Parliament's office on political group meetings of 4 July 2005, the applicant is entitled to have the requested rooms made available. No exceptional grounds for the refusal were present, since the rooms had not been reserved for the time at issue and the planned press conference did not pose a risk to security and would not have adversely affected the Parliament's functioning. The applicant was thereby hindered from providing information on his parliamentary work.

   — The ban from entering the premises imposed on the Russian guests infringes the prohibition of discrimination based on ethnic origin and nationality (Article 21(1) of the Charter of Fundamental Rights of the European Union).

2. Second plea in law: misuse of powers

   — The applicant claims that the actions of the President of the European Parliament were manifestly purely arbitrary and are diametrically opposed to the prohibition of discrimination laid down in the Treaties.

Action brought on 21 January 2016 — Indeutsch International v OHIM — Crafts Americana (Representation of repeated curves between parallel lines)

(Case T-20/16)

(2016/C 106/42)

Language in which the application was lodged: English

Parties

Applicant: M/S. Indeutsch International (Noida, India) (represented by: D. Stone, D. Meale, A. Dykes, Solicitors and S. Malynicz, Barrister)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

Other party to the proceedings before the Board of Appeal: Crafts Americana Group, Inc. (Vancouver, United States)

Details of the proceedings before OHIM

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: Community figurative mark (Representation of repeated curves between parallel lines) — Community trade mark No 8 884 264

Procedure before OHIM: Cancellation proceedings

Contested decision: Decision of the First Board of Appeal of OHIM of 5 November 2015 in Case R 1814/2014-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order OHIM and the other party to pay their own costs and those of the applicant.

Plea in law

— Infringement of Article 7(1)(b) of Regulation No 207/2009.

Action brought on 25 January 2016 — Comprojecto-Projectos e Construções and Others v ECB

(Case T-22/16)

(2016/C 106/43)

Language of the case: Portuguese

Parties

Applicants: Comprojecto-Projectos e Construções, Lda (Lisbon, Portugal), Julião Maria Gomes de Azevedo (Lisbon), Paulo Eduardo Matos Gomes de Azevedo (Lisbon) and Isabel Maria Matos Gomes de Azevedo (Lisbon) (represented by: M. A. Ribeiro, lawyer)

Defendant: European Central Bank

Form of order sought

The applicants claim that the General Court should:

— Declare, pursuant to Article 265 TFEU, that the European Central Bank, by failing to pursue the complaint presented by the applicants on 27 November 2015, unjustifiably abstained from giving a decision, despite having been requested to do.

— In the alternative, annul, pursuant to Articles 263 and 264 TFEU, the decision of the European Central Bank.

— Order the European Central Bank, pursuant to Articles 340 TFEU and 41(3) of the Charter of Fundamental Rights of the European Union, to compensate the applicants in the amount of EUR 4 199 780,43, together with interest on late payments at the statutory rate until actual payment.

— Order the European Central Bank to pay the costs, in accordance with Article 134(1) of the Rules of Procedure.

Pleas in law and main arguments

In support of the action, the applicant relies on the following pleas in law.

1. Unfounded refusal, by omission and failure to take a decision, of the request made to the European Central Bank to take action on the basis of a complaint submitted by the applicants on 27 November 2015, related to certain unlawful and unfounded acts carried out by the Banco de Portugal.

2. Lack of impartiality, transparency, integrity, competence, efficiency and responsibility, breach of the principle of equality before the law (infringement of Article 20 of the Charter of Fundamental Rights).

3. Infringement of essential procedural requirements, infringement of the Treaties and of rules of law relating to their application, misuse of powers.

4. Favourable treatment and protection of IC Millenium/Bcp regarding the use of the financial system for money laundering and non-compliance with European Union obligations concerning the free movement of capital.

5. Infringement of Article 11(3) of Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC and Regulation (EC) No 2006/2004 ('Unfair Commercial Practices Directive').

Action brought on 21 January 2016 — Sovena Portugal — Consumer Goods v OHIM — Mueloliva (FONTOLIVA)

(Case T-24/16)

(2016/C 106/44)

Language in which the application was lodged: English

Parties

Applicant: Sovena Portugal — Consumer Goods, SA (Lisbon, Portugal) (represented by: D. Martins Pereira, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

Other party to the proceedings before the Board of Appeal: Mueloliva, SL (Cordoba, Spain)

Details of the proceedings before OHIM

Applicant: Applicant

Trade mark at issue: International registration designating the European Union in respect of the word mark 'FONTOLIVA' — International registration No 1 107 792 designating the European Union

Procedure before OHIM: Opposition proceedings

Contested decision: Decision of the Second Board of Appeal of OHIM of 4 November 2015 in Case R 1813/2014-2

Form of order sought

The applicant claims that the Court should:

— admit this action;

— dismiss the contested decision in its entirety;

— rectify the contested decision, based on the grounds in this action and declare the granting of protection to International Trademark No 1 107 792 FONTOLIVA in respect of the European Union;

— condemn OHIM in the incurred expenses by the applicant, including the expenses made in the case which run with OHIM;

— condemn the other party in the case to bear the applicant's costs in the OHIM proceedings.

Pleas in law

— Lapse of earlier Spanish trademark No 780 071 FUENOLIVA;

— Insufficiency of the evidence of genuine use of earlier trademark;

— Inexistence of likelihood of confusion — Article 8(1)(b) CTMR;

— Existence of two earlier trademarks FONTOLIVA in Spain.

Action brought on 25 January 2016 — Haw Par v OHIM — Cosmowell (GelenkGold)

(Case T-25/16)

(2016/C 106/45)

Language in which the application was lodged: German

Parties

Applicant: Haw Par Corp. Ltd (Singapore, Singapore) (represented by: R. Härer, C. Schultze, J. Ossing, C. Weber, H. Ranzinger, C. Gehweiler, C. Brockmann, lawyers)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

Other party to the proceedings before the Board of Appeal: Cosmowell GmbH (Sankt Johann in Tirol, Austria)

Details of the proceedings before OHIM

Applicant for the trade mark at issue: Other party to the proceedings before the Board of Appeal

Trade mark at issue: Community figurative mark containing the word element 'GelenkGold' — Community trade mark No 9 957 978

Procedure before OHIM: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of OHIM of 4 November 2015 in Case R 1907/2015-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order OHIM and the other party to the proceedings to pay the costs that the applicant incurred before the General Court and before the Board of Appeal.

Pleas in law

— Infringement of Article 8(1)(b) of Regulation No 207/2009;

— Infringement of the second sentence of Article 75 of Regulation No 207/2009.

Action brought on 25 January 2016 — Caffè Nero Group v OHIM (CAFFÈ NERO)

(Case T-29/16)

(2016/C 106/46)

Language of the case: English

Parties

Applicant: Caffè Nero Group Ltd (London, United Kingdom) (represented by: L. Cassidy, Solicitor)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

Details of the proceedings before OHIM

Trade mark at issue: Community word mark 'CAFFÈ NERO' — Application for registration No 13 238 019

Contested decision: Decision of the First Board of Appeal of OHIM of 4 November 2015 in Case R 410/2015-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— allow Community trade mark application No. 13238019 to proceed to registration;

— waive the objections to the CTM Application under Articles 7(1)(b), (c) and (g) and Article 7(2);

— allows the CTM Application to proceed to acceptance and advertisement for all covered goods and services;

— order OHIM to pay the Applicant's costs in this matter.

Pleas in law

— Infringement of Article 7(1)(b), (c) and (g) of Regulation No 207/2009;

— Infringement of Article 7(2) of Regulation No 207/2009.

Action brought on 26 January 2016 — M.I. Industries v OHIM — Natural Instinct (Natural Instinct Dog and Cat food as nature intended)

(Case T-30/16)

(2016/C 106/47)

Language in which the application was lodged: English

Parties

Applicant: M.I. Industries, Inc. (Lincoln, United States) (represented by: T. Elias, Barrister, B. Cookson, Solicitor)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

Other party to the proceedings before the Board of Appeal: Natural Instinct Ltd (Camberley, United Kingdom)

Details of the proceedings before OHIM

Applicant: Other party to the proceedings before the Board of Appeal

Trade mark at issue: Community figurative mark containing the word elements 'Natural Instinct Dog and Cat food as nature intended' — Application for registration No 11 438 074

Procedure before OHIM: Opposition proceedings

Contested decision: Decision of the Fifth Board of Appeal of OHIM of 26 November 2015 in Case R 2944/2014-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— the applicant's opposition No B 002 181 272 be upheld and NIL's application No 11 438 074 be refused; alternatively, declare that the applicant has proved use its CTMs No 5 208 418 and No 5 208 201 for the purposes of the opposition No B 002 181 272, and remit the matter to the Fifth Board of Appeal for a determination of the issues arising in respect of each of those marks under Article 8(1)(b) CTMR; in the further alternative, remit the matter back to the Fifth Board of Appeal in its entirety;

— order the defendant to pay to the applicant the applicant's costs of and occasioned by this appeal.

Pleas in law

— Infringement of Article 42(2) Regulation No 207/2009;

— Infringement of Rule 22(3) and (4) of Regulation No 2868/95;

— Infringement of Article 8(1)(b) Regulation No 207/2009;

— Infringement of Article 75 Regulation No 207/2009.

Action brought on 25 January 2016 — adp Gauselmann v OHIM (Juwel)

(Case T-31/16)

(2016/C 106/48)

Language of the case: German

Parties

Applicant: adp Gauselmann GmbH (Espelkamp, Germany) (represented by: P. Koch Moreno, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

Details of the proceedings before OHIM

Trade mark at issue: Community word mark 'Juwel' — Application for registration No 12 426 888

Contested decision: Decision of the First Board of Appeal of OHIM of 16 November 2015 in Case R 2571/2014-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order OHIM to pay the costs.

Pleas in law

— Neither Article 7(1)(b) nor Article 7(1)(c) of Regulation No 207/2009 is applicable.

Action brought on 21 January 2016 — Sony Computer Entertainment Europe v OHIM — Vieta Audio (Vita)

(Case T-35/16)

(2016/C 106/49)

Language in which the application was lodged: English

Parties

Applicant: Sony Computer Entertainment Europe Ltd (London, United Kingdom) (represented by: S. Malynicz, Barrister)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

Other party to the proceedings before the Board of Appeal: Vieta Audio, SA (Barcelona, Spain)

Details of the proceedings before OHIM

Proprietor of the trade mark at issue: Applicant

Trade mark at issue: Community word mark 'Vita' — Community trade mark registration No 9 993 361

Procedure before OHIM: Revocation proceedings

Contested decision: Decision of the Fifth Board of Appeal of OHIM of 12 November 2015 in Case R 2232/2014-5

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— order OHIM and the other party to pay their own costs and those of the applicant.

Plea in law

— Infringement of Article 51(1)(a) of Regulation No 207/2009.

Action brought on 26 January 2016 — Caffè Nero Group v OHIM (CAFFÈ NERO)

(Case T-37/16)

(2016/C 106/50)

Language of the case: English

Parties

Applicant: Caffè Nero Group Ltd (London, United Kingdom) (represented by: L. Cassidy, Solicitor)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

Details of the proceedings before OHIM

Trade mark at issue: Community figurative mark containing the word elements 'CAFFÈ NERO' — Application for registration No 13 436 175

Contested decision: Decision of the First Board of Appeal of OHIM of 6 November 2015 in Case R 954/2015-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— allow Community trade mark application No. 13436175 to proceed to registration;

— waive the objections to the CTM Application under Articles 7(1)(b), (c) and (g) and Article 7(2);

— allows the CTM Application to proceed to acceptance and advertisement for all covered goods and services;

— order OHIM to pay the Applicant's costs in this matter.

Pleas in law

— Infringement of Article 7(1)(b), (c) and (g) Regulation No 207/2009;

— Infringement of Article 7(2) of Regulation No 207/2009.

Action brought on 25 January 2016 — Nanu-Nana Joachim Hoepp v OHIM — Fink (NANA FINK)

(Case T-39/16)

(2016/C 106/51)

Language in which the application was lodged: German

Parties

Applicant: Nanu-Nana Joachim Hoepp GmbH & Co. KG (Bremen, Germany) (represented by: T. Boddien, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

Other party to the proceedings before the Board of Appeal: Nadine Fink (Basle, Switzerland)

Details of the proceedings before OHIM

Applicant for the trade mark at issue: Other party to the proceedings before the Board of Appeal

Trade mark at issue: International registration designating the European Union in respect of the figurative mark containing the word elements 'NANA FINK' — International registration designating the European Union No IR 1 111 651

Procedure before OHIM: Opposition proceedings

Contested decision: Decision of the First Board of Appeal of OHIM of 12 November 2015 in Case R 679/2014-1

Form of order sought

The applicant claims that the Court should:

— annul the contested decision in opposition proceedings B 2 125 543 (International trade mark registration No IR 1 111 651);

— order OHIM to pay the costs.

Plea in law

— Infringement of Article 8(1)(b) of Regulation No 207/2009.

Action brought on 29 January 2016 — 1&1 Telecom v Commission

(Case T-43/16)

(2016/C 106/52)

Language of the case: English

Parties

Applicant: 1&1 Telecom GmbH (Montabaur, Germany) (represented by: J. Murach, lawyer and P. Alexiadis, Solicitor)

Defendant: European Commission

Form of order sought

The applicant claims that the Court should:

— annul the decision of the European Commission of 19 November 2015, adopted by the Director General for Competition in relation to the implementation of the Non-MNO Remedy in Case COMP/M.7018 — Telefónica Deutschland/E-Plus (the 'Merger decision'), which declared the Self-Commitment Letter in line with the Final Commitments and with EU law;

— order the Commission to request that TEF DE issues a new Self-Commitment letter that is strictly limited to the obligation required from it, as set out in paragraph 78 of the Final Commitments approved by the merger decision;

— order the Commission to bear its own costs and those of the applicant, in accordance with Article 87 of the Consolidated Version of the Rules of Procedure of the General Court.

Pleas in law and main arguments

In support of the action, the applicant relies on two pleas in law.

1. First plea in law, alleging that, in adopting the decision, the Commission engaged in manifest errors of law because the Treaties, the European Union Merger Regulation ('EUMR'), the Merger decision and the Final Commitments do not leave any room for Clause 2.3 of the Self-Commitment letter as accepted by the decision.

2. Second plea in law, alleging that the Commission, in adopting its decision, misused its powers by taking account considerations unrelated to competition, in breach of the Treaties, the EUMR and the Merger decision.

Action brought on 1 February 2016 — Azanta v OHIM — Novartis (NIMORAL)

(Case T-49/16)

(2016/C 106/53)

Language in which the application was lodged: English

Parties

Applicant: Azanta A/S (Hellerup, Denmark) (represented by: M. Hoffgaard Rasmussen, lawyer)

Defendant: Office for Harmonisation in the Internal Market (Trade Marks and Designs) (OHIM)

Other party to the proceedings before the Board of Appeal: Novartis AG (Basel, Switzerland)

Details of the proceedings before OHIM

Applicant of the trade mark at issue: Applicant

Trade mark at issue: Community word mark 'NIMORAL' — Application for registration No 12 204 079

Procedure before OHIM: Opposition proceedings

Contested decision: Decision of the Fourth Board of Appeal of OHIM of 1 December 2015 in Case R 634/2015-4

Form of order sought

The applicant claims that the Court should:

— annul the contested decision;

— allow the registration of the contested trademark.

Plea in law

— Infringement of Article 8(1)(b) of Regulation No 207/2009.

Appeal brought on 9 February 2016 by Carlo De Nicola against the judgment of the Civil Service Tribunal of 18 December 2015 in Case F-45/11, *De Nicola* v *EIB*

(Case T-55/16 P)

(2016/C 106/54)

Language of the case: Italian

Parties

Appellant: Carlo De Nicola (Strassen, Luxembourg) (represented by: G. Ferabecoli, lawyer)

Other party to the proceedings: European Investment Bank

Form of order sought

The appellant claims that the Court should:

— Uphold the present appeal and, reversing the judgment under appeal in part, set aside points 2 and 3 of the operative part, together with paragraphs 61 to 67 of that judgment;

— Consequently, order the EIB to pay compensation to Dr De Nicola for the harm suffered, as requested in the application instituting proceedings, or, in the alternative, refer the case back to a different chamber of the Civil Service Tribunal in order that it may, in a different formation, give a fresh decision on the paragraphs set aside; and order the EIB to pay the costs.

Grounds of appeal and main arguments

The present case is in essence identical to Cases F-55/08 and F-59/09, which involved proceedings between the appellant and the European Investment Bank.

The appellant states, in this regard, that, in the judgment under appeal, no adjudication was made on the forms of order seeking annulment of the staff report relating to 2009, of the decision of 25 March 2010 refusing promotion, of the 2009 guidelines, of the EIB President's two letters of 17 and 30 November 2010, and of 'all related, consequent and prior measures'.

In support of his appeal, the appellant relies on three grounds of appeal.

1. First ground: obligation to set aside the 2009 guidelines and the EIB President's letters of 17 and 30 November 2010.

   — The appellant submits, in particular, in this regard, that if the Court were to determine that the guidelines in question are unlawful, their setting-aside would oblige the EIB to carry out its own assessments in accordance with more appropriate criteria which safeguard the appellant and his rights.

2. Second ground: the contractual nature of the relationship between the appellant and the EIB.

   — The appellant argues in this connection that he sought damages for breach in respect of the EIB's contractual liability, and not in respect of the European Union's non-contractual liability. The judgment under appeal, inter alia, treats the agents of the EIB in the same way as officials of the other European institutions, even though the employment relationship at issue in the proceedings is governed by private law, thus rendering the legal rules laid down for civil servants inapplicable to the present case.

3. Third ground: application for an order requiring payment of compensation for material and non-pecuniary harm.

   — The appellant submits that the conclusions reached on this point in the judgment under appeal are manifestly wrong in both fact and law, and that consequently all conditions are satisfied for upholding his right to such compensation.

Order of the General Court of 19 January 2016 — Klass v OHIM — F. Smit (PLAYSEAT and PLAYSEATS)

(Case T-540/14) ([1])

(2016/C 106/55)

Language of the case: Dutch

The President of the Second Chamber has ordered that the case be removed from the register.

([1]) OJ C 329, 22.9.2014.

EUROPEAN UNION CIVIL SERVICE TRIBUNAL

Judgment of the Civil Service Tribunal (Third Chamber) of 5 February 2016 –Bulté and Krempa v Commission

(Case F-96/14) ([1])

(Civil service — Surviving dependants of a deceased former official — Pensions — Survivors' pensions — Article 85 of the Staff Regulations — Recovery of overpayment — No due reason for the payment — Patent irregularity — None)

(2016/C 106/56)

Language of the case: French

Parties

Applicants: Hilde Bulté and Tom Krempa (Brussels, Belgium) (represented by: J. Lombaert and A. Surny, lawyers)

Defendant: European Commission (represented initially by J. Currall and G. Gattinara, acting as Agents, and subsequently by G. Gattinara, acting as Agent)

Re:

Application for annulment of the decision taken by the Commission retroactively revising the survivors' pensions paid to the applicants and ordering the recovery of the excess amounts received.

Operative part of the judgment

The Tribunal:

1. *Annuls the decision of the European Commission of 22 November 2013, as set out in the opinion of the Paymaster Office of the same day, to modify, with retroactive effect from 1 August 2010, the pensions paid to Ms Bulté and Mr Krempa in their capacity as the surviving dependants of a deceased former official and to recover the sums overpaid to them from 1 August 2010 until November 2013;*

2. *Orders the European Commission to reimburse Ms Bulté and Mr Krempa for the sums levied on their respective pensions pursuant to the decision referred to in paragraph 1 of this operative part;*

3. *Orders each of the parties to bear their own costs.*

([1]) OJ C 7, 12.1.2015, p. 49.

Judgment of the Civil Service Tribunal (First Chamber) of 5 February 2016 — GV v EEAS

(Case F-137/14) ([1])

(Civil service — EEAS staff — Member of the contract staff — Contract for an indefinite period — Article 47(c) of the CEOS — Reasons for dismissal — Breakdown in the relationship of trust — Right to be heard — Article 41 of the Charter of Fundamental Rights of the European Union — Principle of sound administration — Material damage — Non-material damage)

(2016/C 106/57)

Language of the case: German

Parties

Applicant: GV (represented by: H. Tettenborn, lawyer)

Defendant: European External Action Service (represented by: S. Marquardt and M. Silva, acting as Agents)

Re:

Application for annulment of the decision of the EEAS terminating the applicant's contract of employment for an indefinite period, and a claim for compensation for the material and non-material damage which the applicant claims to have suffered.

Operative part of the judgment

The Tribunal:

1. *Annuls the decision of 29 January 2014 by which the Director of the 'Human Resources' Directorate of the European External Action Service, acting in his capacity as the authority authorised to conclude contracts of employment, decided to terminate GV's employment contract with effect from 31 August 2014;*

2. *Orders the European External Action Service to pay GV the sum of EUR 5 000 by way of compensation for the non-material damage suffered;*

3. *Dismisses the action as to the remainder;*

4. *Orders the European External Action Service to bear its own costs and to bear the costs incurred by GV.*

([1]) OJ C 34, 2.2.2015, p. 54.

Judgment of the Civil Service Tribunal (Third Chamber) of 5 February 2016 –Barnett and Mogensen v Commission

(Case F-56/15) ([1])

(Civil service — Retired officials — Retirement pensions — Article 64 of the Staff Regulations — Weightings — Annual update of weightings — Article 65(2) of the Staff Regulations — Interim update — Articles 3, 4 and 8 of Annex XI to the Staff Regulations — Sensitivity threshold — Change in the cost of living — Article 65(4) of the Staff Regulations — Decision by the legislature not to update the weightings for 2013 and 2014 — Scope — Regulation No 1416/2013 — Over-estimation of the weighting for Denmark — Reduction of the weighting through the interim update mechanism — Misuse of powers)

(2016/C 106/58)

Language of the case: French

Parties

Applicants: Adrian Barnett (Roskilde, Denmark) and Sven-Ole Mogensen (Hellerup, Denmark) (represented by: S. Orlandi and T. Martin, lawyers)

Defendant: European Commission (represented by: G. Gattinara and F. Simonetti, acting as Agents)

Re:

Application for annulment of the decisions to reduce the weighting applicable to the pensions of the applicants, who are resident in Denmark, as is apparent from their pension receipts for June 2014, and a claim for compensation for the non-material damage which they claim to have suffered as a result of the different and contradictory information used to support the contested decisions.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

2. *Orders Mr Barnett and Mr Mogensen to bear their own costs and to pay the costs incurred by the European Commission.*

(1) OJ C 213, 29.6.2015, p. 46.

Judgment of the Civil Service Tribunal (Third Chamber) of 5 February 2016 –Clausen and Kristoffersen v Parliament

(Case F-62/15) (1)

(Civil service — Retired officials — Retirement pensions — Article 64 of the Staff Regulations — Weightings — Annual update of weightings — Article 65(2) of the Staff Regulations — Interim update — Articles 3, 4 and 8 of Annex XI to the Staff Regulations — Sensitivity threshold — Change in the cost of living — Article 65(4) of the Staff Regulations — Decision by the legislature not to update the weightings for 2013 and 2014 — Scope — Regulation No 1416/2013 — Over-estimation of the weighting for Denmark — Reduction of the weighting through the interim update mechanism — Misuse of powers)

(2016/C 106/59)

Language of the case: French

Parties

Applicants: Svend Leon Clausen (Jyllinge, Denmark) and Niels Kristoffersen (Køge, Denmark) (represented by: S. Orlandi and T. Martin, lawyers)

Defendant: European Parliament (represented by: E. Taneva and L. Deneys, acting as Agents)

Re:

Application for annulment of the decisions to reduce the weighting applicable to the pensions of the applicants, who are resident in Denmark, as is apparent from their pension receipts for June 2014, and a claim for compensation for the non-material damage which they claim to have suffered as a result of the different and contradictory information used to support the contested decisions.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

2. *Orders Mr Clausen and Mr Kristoffersen to bear their own costs and to pay the costs incurred by the European Parliament.*

(1) OJ C 213, 29.6.2015, p. 49.

Judgment of the Civil Service Tribunal (Third Chamber) of 5 February 2016 — Barnett, Ditlevsen and Madsen v EESC

(Case F-66/15) ([1])

(Civil service — Retired officials — Retirement pensions — Article 64 of the Staff Regulations — Weightings — Annual update of weightings — Article 65(2) of the Staff Regulations — Interim update — Articles 3, 4 and 8 of Annex XI to the Staff Regulations — Sensitivity threshold — Change in the cost of living — Article 65(4) of the Staff Regulations — Decision by the legislature not to update the weightings for 2013 and 2014 — Scope — Regulation No 1416/2013 — Over-estimation of the weighting for Denmark — Reduction of the weighting through the interim update mechanism — Misuse of powers)

(2016/C 106/60)

Language of the case: French

Parties

Applicants: Inge Barnett (Roskilde, Denmark), Suzanne Ditlevsen (Copenhagen, Denmark) and Annie Madsen (Frederiksberg, Denmark) (represented by: S. Orlandi and T. Martin, lawyers)

Defendant: European Economic And Social Committee (represented by K. Gambino, A. Carvajal, L. Camarena Januzec and X. Chamodraka, acting as Agents, and by B. Wägenbaur, lawyer)

Re:

Application for annulment of the decisions to reduce the weighting applicable to the pensions of the applicants, who are resident in Denmark, as is apparent from their pension receipts for June 2014, and a claim for compensation for the non-material damage which they claim to have suffered as a result of the different and contradictory information used to support the contested decisions.

Operative part of the judgment

The Tribunal:

1. *Dismisses the action;*

2. *Orders Ms Barnett, Ms Ditlevsen and Ms Madsen to bear their own costs and to pay the costs incurred by the European Economic and Social Committee.*

([1]) OJ C 213, 29.06.2015, p. 50.

Order of the Civil Service Tribunal (Second Chamber) of 5 February 2016 — Fedtke v EESC

(Case F-107/15) ([1])

(Civil Service — Officials — Automatic retirement — Retirement age — Application to remain in service beyond the age limit — Second paragraph of Article 52 of the Staff Regulations — Interest of the service — Article 82 of the Rules of Procedure — Absolute bar to proceeding — Irregularity of the pre-litigation procedure)

(2016/C 106/61)

Language of the case: French

Parties

Applicant: Ingrid Fedtke (Wezembeek-Oppen, Belgium) (represented by: M.-A. Lucas, lawyer)

Defendant: European Economic and Social Committee (represented by: K. Gambino, A. Carvajal, L. Camerena Januzec and X. Chamodraka, acting as Agents, and B. Wägenbaur, lawyer)

Re:

Application for annulment of the decision placing the applicant in retirement with effect from 31 December 2014 and the decision rejecting her application for an extension of her service.

Operative part of the order

1. *The action is dismissed as inadmissible.*

2. *Ms Fedtke shall bear her own costs and shall pay the costs incurred by the European Economic and Social Committee.*

([1]) OJ C 320, 28.9.2015, p. 53.

Action brought on 11 January 2016 — ZZ v EEAS

(Case F-2/16)

(2016/C 106/62)

Language of the case: German

Parties

Applicant: ZZ (represented by: H.-E. von Harpe, lawyer)

Defendant: European External Action Service (EEAS)

Subject matter and description of the proceedings

Annulment of the EEAS's decision not to reimburse the applicant his removal expenses from Zambia to Brussels.

Form of order sought

The applicant claims that the Court should:

— annul the defendant's decision of 12 March 2015;

— annul, if necessary, also the implicit rejection of the complaint;

— order the European External Action Service to pay the costs, including those incurred in the pre-litigation procedure.

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